

(2024) 04 TEL CK 0041

High Court For The State Of Telangana:: At Hyderabad

Case No: Writ Petition No. 32848 Of 2023

M/ S. Diddi Kumara Swamy Adthi
And Commission Marchant

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision: April 26, 2024

Acts Referred:

- Constitution Of India, 1950 - Article 12, 14, 21, 226

Hon'ble Judges: Nagesh Bheemapaka, J

Bench: Single Bench

Final Decision: Disposed Of

Judgement

1. This writ petition is filed seeking the following relief:

“to issue a writ order or direction more particularly one in the nature of writ of mandamus declaring the action of the 3rd and 4th respondents in amending the Rules and Regulations of the 3rd and the 4th Respondents Chamber of Commerce in the Executive Committee On 12.10.2023 and approved in the General Body on 03.11.2023 that A member who is elected and holding the office of any public representative of any political party shall not contest the elections of the Respondent No.3 Chamber of Commerce for any post of Executive Body and without approval of the same by the State Government under provisions of the TS Non Trading Companies Act 1962 Act No 2 of 1967 and issued Election Schedule on 12.10.2023 to conduct elections for the Executive Body of the 3rd and 4th respondents Chamber of Commerce for the year of 2023-2024, and 2024-2025 and rejected the nomination of the petitioner by the 5th respondent on 10.11.2023 as an ex-facie illegal, arbitrary discriminatory, unjust, unfair, unreasonable, whimsical, without jurisdiction, non application of mind, without following due procedure of law, and in violation of the provisions of the Telangana

State Non Trading Companies Act 1962 Act No 2 of 1962 and in violation of Article 14 and 21 of the Constitution of India and also against the catena judgments of this Honble Court and an Apex Court and set aside the same and consequently direct the respondent to follow the due procedure of law in amending the Rules and Regulations of the 3rd and 4th respondents Chamber of Commerce and the provisions of the Telangana State Non Trading Companies Act 1962 Act No 2 of 1962 and in issuing the Election Notification for conduct the Elections of the Executive Body for the year 2023-2024 and 2024-2025 forthwith and pass"

2. Heard Sri Chikkudu Prabhakar, learned counsel for the petitioner, learned Government Pleader for Irrigation and Commerce for respondents 1 to 5.

3. Brief facts of the case are that the petitioner is a Adthi and Commission Merchant under the name and style of M/s Diddi Kumara Swamy Adthi and Commission Merchant, established in Shutter No.76 at Enamamula Agriculture Market, Warangal, and doing business by purchasing the agriculture products from farmers since 02.07.1988 and continuing as a Member of the 3rd respondent Chamber of Commerce without any allegation against the petitioner. The petitioner is also the Corporator of 34 Division, Greater Warangal Municipal Corporation. It is averred that earlier the petitioner was elected as President of the 3rd respondent Chamber of Commerce several times. It is averred that the 3rd respondent was registered under the provisions of T.S. Non Trading Companies Act 1962, and though 3rd and 4th respondents Executive Committee period completed, the elections were not conducted for 2023-2024.

4. The petitioner challenges the action of respondents 3 and 4 in amending the Rules and Regulations of the Respondents 3 and 4 Society Chamber of Commerce in the Executive Committee on 12.10.2023 and approved in the General Body meeting on 03.11.2023 that Clause "5(b) Chamber of Commerce Member who is placed, elected, and holding the office of any public representative of any political party shall not contest the election of the respondent No.3 Society Chamber of Commerce Warangal for any post of Executive Body" and without approval of the same by the State Government under the provisions of Telangana State Non Trading Companies Act, 1962 (Act No.2 of 1967), issued Election Schedule on 12.10.2023 to conduct elections for the Executive Body of the 3rd and 4th respondents Chamber of Commerce Warangal Society, for the year 2023-2024 and 2024-2025 and rejected the nomination of the petitioner by the 5th respondent on 10.11.2023 as illegal, arbitrary and in violation of Articles 14 and 21 of the Constitution of India.

5. Learned counsel for the petitioner contends that the respondents 3 to 5 have not followed the due procedure of law while amending the impugned rules of Executive Committee and General Body, and that the Resolution to not permit any person

holding office of public representative to hold a position in the Executive Committee of the 3rd respondent is violative of the Rules and Regulations of 3rd and 4th respondents organization and the provisions of T.S.Non Trading Companies Act, 1962. Learned counsel further submits that the impugned Resolution has no approval of the State Government and therefore rejecting the nomination of the petitioner under the impugned Resolution is illegal.

6. Learned counsel for the petitioner relied on Union of India v. International Trading Co. (2003) 5 SCC 437 ::: 2003 SCCOnLine SC 638 wherein the Hon'ble Apex Court observed as under:

"14. It is trite law that Article 14 of the Constitution applies also to matters of governmental policy and if the policy or any action of the government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional.

15. While the discretion to change the policy in exercise of the executive power, when not trammled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.

16. Where a particular mode is prescribed for doing an act and there is no impediment in adopting the procedure, the deviation to act in a different manner which does not disclose any discernible principle which is reasonable itself shall be labeled as arbitrary. Every State action must be informed by reason and it follows that an act uninformed by reason is per se arbitrary."

7. Learned counsel for the petitioner has also relied on Vasavi Engineering College Parents Association v. State of Telangana (2019) 7 SCC 172 :: 2019 SCC OnLine SC 805 wherein judicial restraint in exercise of judicial review was considered in the State (NCT of Delhi) v. Sanjeev (SCC p. 191, para 16) wherein it was held as under:

"16. .. One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is "illegality", the second "irrationality", and the third "procedural impropriety". These principles were highlighted by Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service (commonly known as CCSU case). If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated"

8. Learned counsel for petitioner has also relied on Rajbala v. State of Haryana (2016) 2 SCC 445 :: 2015 SCC OnLine SC 1306, wherein it was held:

"97. In the light of the aforementioned two authoritative pronouncements in People's Union for Civil Liberties, and Javeedcases, we are of the considered opinion that both the rights, namely "right to vote" and "right to contest" are constitutional rights of the citizen.

9. Respondents 3 and 4 have filed counter affidavit. The sum and substance of the counter affidavit is that the Chamber of Commerce not being an instrumentality of "State" under Article 12 of the Constitution of India, the petitioner's prayer is misplaced and the petitioner does not have justiciable right to litigate with the nature of prayer sought in the writ petition. It is also contended in the counter that the prayer is only against respondents 3 and 4 but not "State" and therefore the matter does not fall within the purview of writ jurisdiction. It is also averred that the Association issued notice for General Body Meeting on 12.10.2023 for amending the Rules for introducing new Resolutions; and the notice issued in pursuance of said General Body Meeting had all the proposed amendments and prospective resolutions to be made. Clause 5b of the said notice clearly mentioned that "Chamber members are facing difficulties because the members who are members of the chamber are elected as representatives of political parties and the members are holding the posts. So, members elected as political representatives cannot contest the chamber election. Consequently, in the General Body Meeting held on 03.11.2023, majority of the members attended have unanimously approved the proposed amendments and one of the amendments is that the persons who are already holding a post as public representative should not contest the upcoming Chamber of Commerce executive positions. The persons who objected to such amendments were only six (6), and the petitioner herein is not the one among those six persons whereas the persons who approved the Resolutions were more than 460 members which includes the petitioner herein. It is further submitted that the petitioner also attends the said meeting and signed in the Minutes of the Meeting and his name is figured at Serial No.55 and therefore the petitioner cannot now turn back and file the present writ petition. It is alleged that the petitioner suppressed these facts

and obtained interim orders of this Court.

10. It is further stated in the counter affidavit that a resolution was never passed arbitrarily and it is the practice of the Chamber of Commerce that any resolution passed by the Executive Committee approved by the Supreme Body i.e., the General Body, are being adapted and implemented for more than four decades. Hence, the resolution passed in the General Body dated 03.11.2023 is correct and has to be implemented. It is further stated that the petitioner was elected as President of the Chamber of Commerce on several occasions and during the petitioner's tenure as President, several amendments were done and same were implemented but the same were not ratified by respondent No.2.

11. It is further stated that the procedure adopted for proposing and implementing amendments in the Executive Body Meeting is being followed for more than four decades and is a matter of record. It is further stated that the filing of O.P. under the provisions of Telangana Societies Registration Act, 2001 by other members is a matter of record, and the petitioner has got the alternative remedy to seek redressal of his grievance. Along with the material papers of the counter affidavit, the Resolution passed on 03.11.2023 is also annexed, and the Resolution shows that the Chamber of Commerce meeting was attended by 472 members and they put their signature of attendance, and the petitioner put his signature at Serial Number 55; and the impugned Resolution was objected by only six people, who are at Serial Number 100 (Vasundhara Traders), Serial Number 75 (Sainatha Traders), Serial Number 165 (Shanmukha Traders), Serial Number 196 (Rajarajeshwari Traders), Serial Number 187 (Kamakshi Traders), and Serial Number 335 (Rajender Fruits Company), and the petitioner's name is not in the objector's list of the Resolution.

12. Learned Government Pleader relied on the judgment of the Hon'ble Supreme Court in *Prestige Lights Ltd v. State Bank of India* (2007) 8 SCC 449, wherein it is held as under:

"34. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ Courts would become impossible."

13. Learned counsel for respondents has also relied on the judgment of High Court of Karnataka in B.L. Shankarappa v. Federation of Karnataka Chambers of Commerce and Industry (FKCCI) 2022 LawSuit (Kar) 2557 wherein it the Court observed:

“(ii) Merely because the avowed objects of a private body linguistically partake the nature of certain functions which ordinarily governmental bodies do, it does not thereby become a limb or agency of the State. The indicia to become one are different and apparently lacking in the formation & functioning of FKCCI. A body is formed inter alia for promoting the public interest and therefore, it assumes the mantle of State u/a 12. Is too farfetched an argument, it does not draw support or succor from contemporary opiniojuris. When emphatically asked by Court, petitioner’s counsel Mr. Phanindra fairly conceded that none of the High Courts in the country as yet has held that such Federations (i.e., counterparts of FKCCI) obtaining in other States, do fit into the expression ‘other authorities’ employed in Article 12.”

“(iv) An association of persons incorporated or not, may undertake activities very much in public interest, say for example, it may profess to protect the sovereignty & integrity of nation, laudable it is, undoubtedly; however thereby, it does not become a ‘State Agency’ for the purpose of Part III of the Constitution. Similarly, if an entity is formed with the sole object of giving effect to Part IV Directives that per se does not take it to the precincts of Article 12, inasmuch as the public as such, is not entitled to demand for the implementation of professed objects of the said entity.

What is to be seen is, whether the functions of such a body are pregnant with sufficient public law elements as to justify invocation of writ jurisdiction: in the case at hands, the answer to this question is a plain ‘NO’. The ingenuity of arguments advanced at the Bar, cannot catapult a private entity like FKCCI into the ever expanding orbit of Article 12.”

“(E(iii)) Lastly, the submission made on behalf of the petitioner for termination of illegal/ineligible members including trusts such as, ‘VasaviVidyanikethan Trust’ again cannot be subjected to judicial review. Who should be members and who should not be, are all matters of private policy as incorporated in the MOA/AOA/Byelaws and the decision making in matters like this left to the Managing Committee of FKCCI, for the reasons already discussed supra. An argument to the contrary would render the Writ Court the Managing Body. That is not the object with which writ jurisdiction is constitutionally conferred on this Court.”

“It hardly needs to be stated, the discussion and observations hereinabove made being confined to disposal of the Writ Petition shall not come in the way of petitioner seeking redressal of his grievance elsewhere in accordance with law, and all contentions in that regard are kept open.”

14. In the judgment in *The Warangal Chamber of Commerce v. Director of Marketing, Government of Andhra Pradesh*, relied on by the learned counsel for respondents, it is observed as under:

“15. Rules governing locus standi to claim relief under Article 226 vary according to the nature of the remedy sought. Each remedy has its own technicalities. In this case, we are concerned with Mandamus. To successfully maintain an application for the issue of a writ of mandamus. Courts have mainly laid down three tests (1) the applicant must have a legal right, (2) the applicant must show that the duty which is sought to be enforced is owned to him, (3) the applicant must be able to establish an interest, the invasion of which has given rise to the action. Doubt or difficulty often arises in the application of the third test.”

15. Having considered the respective submissions and perusing the material on record, it is pertinent to note that, as per the material papers furnished in the counter affidavit, the impugned Resolution Meeting conducted on 03.11.2023 was attended by the petitioner along with other 472 members. It is not in dispute that the petitioner has not objected to the decisions arrived in the Meeting and it is also not in dispute that the people who are aggrieved by the decisions arrived in the meeting had approached the District Court by way of an Original Petition.

16. Therefore, in view of the alternative remedy, this writ petition is disposed of with liberty to the petitioner to avail the alternative remedies as available under law by keeping it open to the parties to raise all the contentions sought to be raised in this writ petition. The interim order dated 04.12.2023 stands vacated. No costs.

Miscellaneous petitions, if any pending, shall stand closed.