

(2016) 10 MAD CK 0056

MADRAS HIGH COURT

Case No: O.S.A. No. 166 of 2016. (Appeal filed under Order 36, Rule 1 of O.S. Rules r/w Clause 15 of the Letters Patent, against the fair and decreetal order passed by this Court on 07.06.2016 in O.A. No. 296 of 2016 in C.S. No. 222 of 2016)

Rev. P.M. Vijayaseelan

APPELLANT

Vs

Rev. M. Barnaboss

RESPONDENT

Date of Decision: Oct. 26, 2016

Citation: (2016) 8 MLJ 427

Hon'ble Judges: Mr. Sanjay Kishan Kaul, CJ. and Mr. R. Mahadevan, J.

Bench: Division Bench

Advocate: Mr. Paul for M/s. Paul and Paul, Advocates, for the Respondents Nos. 11 to 19; Mrs. Dakshayani Reddy, Advocate, for the Appellants

Final Decision: Allowed

Judgement

Mr. R.Mahadevan, J. - This appeal is filed against the fair and decreetal order passed by this Court on 07.06.2016 in O.A. No. 296 of 2016 in C.S.No.222 of 2016.

2. The facts arising out of this appeal are as under:-

(I) The appellant herein is the applicant in O.A.No.296 of 2016 and the plaintiff in the suit in C.S.No.222 of 2016. The respondents herein are the respondents in O.A.No.296 of 2016 and the defendants in the suit in C.S.No.222 of 2016. Claiming to be the President of Advent Christian Conference of India, the appellant originally filed the suit in C.S.No.222 of 2016 seeking an order of permanent injunction restraining the respondents 11 to 18 from interfering with his function as the President of the 19th respondent/Advent Christian Conference of India. Pending suit, an application was filed before this Court in O.A.No.296 of 2016 seeking an order of interim injunction restraining the respondents 11 to 18 from interfering with his function as the President of the 19th respondent/Advent Christian Conference of India.

(ii) Advent Christian Conference of India, the 19th respondent herein, is a society registered under the provisions of the Tamil Nadu Societies Registration Act. The case of the appellant is that he was duly elected as President of the 19th respondent society by the Faith and Order Committee vide the resolution of the said committee dated 26.03.2016 and it has to be approved by the Executive Committee. In so far as the various churches which are part of the Advent Christian Conference of India are concerned, the same are divided into divisions and the number of divisions is to be decided by the Faith and Order Committee which is the permanent committee as per the bye-laws. The said committee is the supreme committee with regard to appointments to various posts and with regard to religious decisions and laying down of guidelines. As per the decision of the Faith and Order Committee, as on date, there are 19 divisions under the Advent Christian Conference of India. As per the bye-laws, for each division, the senior most local Pastor is appointed as the Area Chairman and by virtue of which he becomes a member of the Faith and Order Committee. Thus the respondents 1 to 18 along with the appellant are the members of the Faith and Order Committee, which represents the churches which are under the umbrella of the Advent Christian Conference of India.

(iii) According to the appellant, for the post of President of the 19th respondent society, the 11th respondent herein was not selected due to mal-administration. While so, the 11th respondent, who was earlier elected as President for the period 2014-2016, colluded with the 12th respondent, the President of the Faith and Order Committee and in the Executive Committee Meeting held on 26.03.2016, the 11th respondent's name, i.e., Rev.A.Francis Thangadurai, was announced as the President of the 19th respondent society instead of the appellant. The case of the respondents 11 to 19 is that the Faith and Order Committee is only the sub-committee of the Executive Committee and the Executive Committee has more powers. It is their case that even though the appellant was elected as President of the 19th respondent society by the Faith and Order Committee, the ultimate power lies with the Executive Committee and General Body of the Society and only if the Executive Committee approves the so called appointment, it will become valid. It is their further case that a resolution was passed unanimously in the Executive Committee to extend the tenure of the 11th respondent for a further period of two years, as it was the usual practise hitherto, and the same has not been put into challenge by the appellant.

(iv) Considering the facts and circumstances of the case, the learned single Judge dismissed the original application observing that 26 members have attended the executive committee and an unanimous resolution was passed to extend the tenure of the 11th respondent for a further period of two years, and the decision of the executive committee was not put into challenge by the appellant; that in view of the subsequent unanimous resolution passed by the executive committee, the appellant has no legal right to get an interim protection. The learned single Judge also stated that until and unless the appellant gets approval for being appointed as President,

he cannot act as the President.

(v) Challenging the order passed by the learned single Judge, the present appeal has been filed.

3. The learned counsel for the appellant has submitted that the procedure for election to the post of President is governed by the bye-laws of the society duly registered under the provisions of the Tamil Nadu Societies Registration Act. Chapter-VI of the bye-laws of the Advent Christian Conference of India states that the Faith and Order Committee shall appoint qualified persons for the post of President and Treasurer and get the approval of the Executive Committee and then the same shall be announced in the General Body. The respondents 1 to 10 also filed affidavits supporting and affirming the fact that the appellant was duly selected as President by the Faith and Order Committee vide resolution dated 26.03.2016. It is the specific case of the appellant that the element of election/selection to the post of President only vests with the Faith and Order committee and inter-se evaluation is only done by the said committee and accordingly the appellant was evaluated as against the 11th respondent and chosen, and that the role of the Executive Committee as per bye-laws is only approval of appointment and not more than that and the role of the General Body is confined only to the extent of announcement. Thus, the learned counsel submitted that the administration of the society has to be strictly in consonance with the bye-laws of the society. She further submitted that the learned single Judge has erred in not appreciating the stand of the appellant that a fresh election should be conducted in view of the fact that the election was vitiated by fraud due to collusion between the 11th and 12th respondents. She, in all fairness, submitted that to give a quietus to the entire issue, this Court may appoint an Advocate Commissioner to conduct a fresh election to the post of President as per the bye-laws. She further submitted that this submission of appointment of Advocate Commissioner to conduct fresh election is made only with an intention to aid the smooth functioning of the respondent-society, without prejudice to the fact that the appellant is the duly elected President of the 19th respondent society. Stating so, she prayed that the order passed by the learned single Judge has to be set aside and this appeal has to be allowed.

4. The learned counsel for the appellant relied on the decision of the Hon'ble Supreme Court in **State of U.P. v. C.O.D.Chheoki Employees" Cooperative Society Ltd. and others, reported in (1997) 3 SCC 681**, and submitted that a member of a society has no independent right qua the society and he cannot assail constitutionality of the Act, rules and bye-laws. She emphasised that it is the society that is entitled to represent as the corporate aggregate, and no individual member is entitled to assail the constitutionality of the provisions of the Act, rules and the bye-laws. She also relied on the decision of the Hon'ble Supreme Court in **Goa State Cooperative Bank Ltd. v. Pedne Taluka Prathamik Shikshak Pat Saunstha Ltd., reported in (1997) 1 SCC 356**, in support of her contention that election to the

society has to be conducted only in accordance with relevant rules and the bye-laws of the society applicable as on the date of election. She also relied on the decision of the Hon'ble Supreme Court in **Ishwar Nagar Cooperative Housing Building Society v. Parma Nand Sharma and others, reported in (2010) 14 SCC 230**, and submitted that the bye-laws of the society regulate the management of the society and govern the relationship between the society and members inter se, and the members are bound by it.

5. Per contra, the learned counsel for the respondents 11 to 19 submitted that the procedure for selection and appointment does not vest only with the Faith and Order Committee. The Faith and Order Committee is only a standing committee of the society functioning under the control of the Executive Committee. The Executive Committee has the power to supervise the work of all standing committees including the Faith and Order Committee and to examine their resolutions. He also denied the claim of the appellant that a resolution was passed and minutes were drawn choosing the appellant as President. He further submitted that the alleged minutes of the Faith and Order Committee filed by the appellant before the Court is a fabricated one and it does not contain the signature of the Chairman of Faith and Order Committee as well as those who opposed the candidature of the appellant. He further stated that it is not correct on the part of the appellant to state that the 11th respondent's name was deliberately announced. Finally, he submitted that the appellant has not come to the Court with clean hands and hence this appeal has to be rejected.

6. Heard the learned counsel on either side and perused the materials available on record carefully.

7. A society is governed by its bye-laws. Bye-laws of the society regulate the management of the society and govern the relationship between the society and its members. The members are bound by the bye-laws. In **Zoroastrian Cooperative Housing Society Ltd. v. District Registrar, Coop.Societies (Urban), reported in (2005) 5 SCC 632**, it has been held that if the relevant bye-law of a society places any restriction on a person getting admitted to a cooperative society, that bye-law would be operative against him and no person, or aspiring member, can be heard to say that he will not be bound by that law which prescribes a qualification for his membership. Thus, it is clear that the bye-laws of the society is of paramount importance in regulating the management of the society and also in governing the relationship between the society and its members.

8. The bye-laws of a society are framed in the General Body Meeting of the society. As per Chapter-VI of the bye-laws of the Advent Christian Conference of India, the members of the Executive Committee comprises of the President, Vice-President, Secretary, Treasurer, Assistant Treasurer and various other persons, including the Chairman of the Faith and Order Committee. The stand of the appellant is that the society is being run as per its bye-laws duly registered under the Act. The relevant

portion of Chapter-VI of the bye-laws is extracted hereunder:

"The Faith and Order Committee shall appoint qualified persons for the post of President and Treasurer and get the approval of the Executive Committee and then he shall be announced in the General Body."

9. It is the case of the appellant that only as per the procedure contemplated under the bye-laws of the society, the appellant was selected to the post of President by the Faith and Order Committee, since the element of election/selection to the post of President vests only with the Faith and Order Committee, and it is supported by a resolution dated 26.03.2016. Only as per the resolution dated 26.03.2016 passed by the Faith and Order Committee, the appellant was selected and the role of the Executive Committee is only to the extent of approval and the role of the General Body is only to the extent of announcement.

10. But it is the case of the respondents 11 to 19 that the procedure for selection and appointment as set out by the appellant, does not vest only with the Faith and Order Committee, since the Faith and Order Committee is functioning under the control of the Executive Committee. According to them, the Executive Committee has the power to supervise the work of all standing committees including the Faith and Order Committee, and to examine their resolutions. The further submission made in this respect is that since the candidature of the appellant has neither been approved by the Executive Committee, nor by the General Body, the appellant cannot claim any right to function as President of the 19th respondent society.

11. It is true that the Executive Committee has powers to appoint standing committees and one such committee is the Faith and Order Committee. But when power has been granted to the Faith and Order Committee for appointment of persons to certain posts, and bye-laws have been framed fixing responsibilities for the committees, it is not at all correct on the part of the Executive Committee to interfere with the decisions taken by the standing committees. Of course, the Executive Committee has more powers, but once a decision has been taken by a standing committee and it has been proceeded with in the manner as contemplated under the bye-laws by passing a resolution and consequently issuing a circular to that effect, then it has to be approved by the Executive Committee, as per the procedure contemplated under the bye-laws. Therefore, the Executive Committee cannot override the bye-laws and take a decision on its own, stating that approval cannot be granted and hence the decision taken by the Faith and Order Committee has no legs to stand. If the Executive Committee has got more powers and it can take a decision on its own, then it has to be clearly spelt out in the bye-laws, for which necessary amendments have to be carried out in the bye-laws in the manner known to law. But it is not stated in the bye-laws that the Executive Committee can take a decision overriding the decision of the Faith and Order Committee.

12. With regard to the submission of the learned counsel for the appellant that a fresh election may be directed to be conducted for the post of President as per the bye-laws, this Court is not inclined to interfere with the same. It is always open to the appellant and the members concerned to conduct a fresh election for the post of President of the Advent Christian Conference of India as per the mandate of the bye-laws. They may choose to do so after reaching a consensus on the same.

13. In view of the reasons stated above, the order of this Court dated 07.06.2016 in O.A.No.296 of 2016 in C.S.No.222 of 2016 is set aside. This appeal is allowed. No costs.