

Dr. Srinivasa Rao Kothapalli and Others Vs Dr. Appa Rao Mukkamala and Others

Court: Andhra Pradesh High Court

Date of Decision: Dec. 27, 2013

Citation: (2014) 4 ALD 345

Hon'ble Judges: M.S. Ramachandra Rao, J

Bench: Single Bench

Advocate: Vedula Venkataramana for Bharadwaj Associates, for the Appellant; D.V. Sitarama Murthy, Sri C.S. Surya Prakash Rao, for RR 1, 3 and 4 to 11, Sri C.V. Mohan Reddy, Sri K. Jyothi Prasad, for the R-2 and Sri N.V. Ramanujam, Counsel for the R-10, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.S. Ramachandra Rao, J.

This Civil Revision Petition is filed u/s 227 of the Constitution of India challenging the order dt. 10-12-2013 in

I.A. No. 2310 of 2013 in S.O.P. No. 176 of 2006. M/s. N.R.I. Academy of Sciences (for short "the Society") is a Society, registered under the

provisions of the AP Societies Registration Act, 2001 (hereinafter referred to as "the Act") with registration No. 482 of 2001 with the District

Registrar, Vijayawada (for short "the Registrar") and has its registered office in Vijayawada. The said Society was established with the object of

promoting the educational needs in Medical Education, Para Medical Education and Health Sciences etc. The Society had established and is

running an N.R.I. Medical College and N.R.I. General Hospital in China Kakani village, Mangalagiri Mandal, Guntur District.

The Society has a Memorandum of Association and also bye-laws registered with the Registrar. The petitioners are members of the said Society.

2. They filed above S.O.P. against respondents and the Registrar u/s 23 of the Act to declare that they are duly elected as office bearers of the

above Society in a General Body Meeting said to have been convened on 25-01-2013 and to direct the Registrar to record the proceedings of the

Minutes submitted by them pursuant to the said meeting.

3. In the said S.O.P., they contended that the membership of the Society is fixed at a maximum of 26 by the bye-laws of the Society; that as per

bye-law 8, the Executive Committee consists of 9 persons only elected by the General Body whose term is for two years from the date of election

and the said executive committee consists of the President, Vice President, Secretary, Joint Secretary, Treasurer, Joint Treasurer and three

Executive Committee Members; that the term of the previous Executive Committee expired on 13-01-2013; that 2nd petitioner, as Secretary of

the Executive Committee of the Society, sent a notice on 09-01-2013 to 21 members existing as on that date about holding of a Annual General

Body Meeting on 25-01-2013 at 10 a.m. within the premises of Hippocrates Hall of the NRI General Hospital, to elect a new Executive

Committee; that on that day, and at that time, a meeting of the General Body took place in which 13 members participated, some in person and

some by proxy, wherein the 1st petitioner was elected as President, 4th petitioner as Vice President, and the 2nd petitioner as Secretary of the

Executive Committee along with other office bearers; that this was communicated to the District Registrar at Vijayawada on 28-01-2013; on

account of misunderstanding among the members, the remaining members did not attend the said meeting, and with an intention to create

complications and confusion, got an advertisement issued in Eenadu and Andhra Jyothi Telugu Daily Newspapers on 25-01-2013 stating that

General Body Meeting was held on 23-01-2013 in which 1st respondent was elected as a President, 2nd respondent was elected as a Vice

President, 3rd respondent was elected as a Secretary and respondent Nos. 4 to 11 were elected as other office bearers and as Executive

Committee Members; that there was no such General Body Meeting held on that day and in fact, respondent Nos. 4 to 11 are not even members

of the above Society as they were not legally admitted into the Society as per the procedure.

4. It was contended that respondent Nos. 4 to 11, claiming to be members of the Society, and other respondents claiming to be the elected office

bearers of the Executive Committee of the Society, started creating confusion and legal complications in the smooth running of the Society and also

prevented the petitioners in discharging their duties; that S.O.P. No. 797 of 2012 was filed before the District Judge, Krishna at Machilipatnam by

one of the members by name Dr. Basaveswara Rao Yalamanchili to declare that there are only 21 members in the Society having a right to vote;

that the said Court by order dt. 02-01-2013 had declared that there are only 21 members in the Society having right of vote, but declined to grant

the relief of permanent injunction prayed for; that W.P. No. 1583 of 2013 was filed by 1st respondent to restrain the conduct of General Body

Meeting to be held on 25-01-2013 pursuant to the notice dt. 09-01-2013, but subsequently the said writ petition was withdrawn on 30-11-2013;

that 1st respondent also got filed S.O.P. No. 44 of 2013 before the same Court to declare the notice issued by 3rd petitioner calling General Body

Meeting as illegal and to grant injunction restraining the petitioners from conducting the General Body Meeting on 25-01-2013, and the same is

pending; that 1st respondent or 3rd respondent did not disclose that they had issued notice convening a General Body Meeting on 23-01-2013 in

W.P. No. 1583 of 2013 or S.O.P. No. 44 of 2013; and therefore, the petitioners were constrained to file S.O.P. No. 176 of 2013.

5. It is not disputed that the order dt. 02-01-2013 passed by II Additional District Judge, Vijayawada in S.O.P. No. 797 of 2012 was set aside

by this Court in C.R.P. No. 592 of 2013 on the ground that the relief granted by the said Court was beyond the prayer sought for in that S.O.P.

and that the petitioner in that Revision, although a necessary party, was not joined as a party in the said S.O.P. This Court also held that if 1st

respondent therein, Dr. Basaveswara Rao Yalamanchili, felt that the petitioner in the Revision and others were not validly admitted as members of

the Society, he is at liberty to challenge their membership before the competent Court, by impleading all the necessary parties including the

petitioner as a party respondent.

6. Along with the S.O.P. 176 of 2013, petitioners herein also filed I.A. No. 2310 of 2013 seeking an ad-interim injunction restraining the

respondents 1 to 11 from interfering with the management and administration of the petitioner 1 to 8 in respect of the above Society or to convene

any General Body Meeting of the said Society, either on 16-11-2013 or on any other date. In the said application, they contended:

(i) that strength of membership of Society is maximum 26 and as on 25.1.2013 there were only 21 members;

(ii) that 2nd respondent had issued a notice Ex. B28/31-10-2013 to the members of the Society and also outsiders proposing to convene an

Extraordinary General Body Meeting on 16-11-2013 to discuss the agenda mentioned therein; Agenda item No. 2 mentioned that although

election to the Executive Committee of the Society had been conducted, several legal proceedings had been initiated by some of the members

hampering the administration of the Society, that the Society is debilitated in actively pursuing the objects for which it is established, that a broadly

accepted Executive Committee would enable restoration of tranquility in administration and to conclude all disputes pending before Courts of Law

and therefore, to put in place a validly elected Executive Committee, an election to the various offices of the Executive Committee be conducted

afresh.

(iii) that they had already been elected validly in the meeting convened on 25-01-2013 pursuant to the notice on 09-01-2013 as the Executive

Committee of the Society; respondents 4 to 11 are not members of the Society; that the notice Ex. B28/dt. 31-10-2013 issued by 2nd respondent

is illegal and unauthorized, as 2nd respondent was never authorized to act as a Secretary.

(iv) that there is no need to convene an Extraordinary General Body Meeting to discuss the issues proposed by the members and if 2nd

respondent is allowed to convene such meeting, it would result in hardship and chaos in the administration of the Society and would enable

unauthorized persons to take over the administration of the Society by illegal methods. The application also referred to S.O.P. Nos. 44, 62, 177,

391 and 409 of 2013 filed by some of the petitioners as well as respondents in respect of the elections to, and the functioning of the Executive

Committee of the Society.

(v) that 2nd petitioner was elected as a Secretary in the meeting held on 25-01-2013; that the term of the Executive Committee elected on that day

would expire by the end of January 2015 and in this view of the matter, there is no necessity to conduct elections to the Executive Committee of

the Society before the term of the present Executive Committee expires.

(vi) that 2nd petitioner and others had received Ex. B28 notices dt. 31-10-2013 issued by 2nd respondent and they sent replies objecting to the

proposed meeting contending that 2nd respondent is not the Secretary and they had no right to call for the meeting. But notwithstanding the said

objections, 2nd respondent sent notices to not only the 21 members of the Society but also to third parties such as respondent Nos. 4 to 11 who

are not members of the Society.

7. Counter affidavit was filed by 1st respondent opposing the grant of temporary injunction to the petitioners. The first respondent contended:

(i) that the strength of membership of the Society is 30 and not 26/21 as alleged by the petitioners;

(ii) that the election of 2nd petitioner as Secretary or other petitioners to other offices in the executive Committee in the meeting held on 25-01-

2013 is non est in the eye of law and therefore the contention that the term of the petitioners as members of the said Executive Committee would

expire by January 2015 is not tenable.

(iii) that 1st respondent and 2nd respondent were duly elected as President and Secretary in the elections held on 23.1.2013 duly circulating notice

all the 30 members of the Society and other respondents have also been elected to the Executive Committee during the said election.

(iv) that it is not correct to state that the respondents 4 to 11 are not members of the Society.

(v) that the Society runs a Medical College having about 1500 medical students in various fields apart from running a hospital having 1000 beds

and 1300 patients would be treated as out patients in a day on a nominal fee; if the parties are left to pursue the litigation before the Trial Courts and

at High Courts, there will be no solution in near future in view of the pendency of a large number of Court cases filed by one member against other

or more; that the expansion of the college and the hospital is greatly hampered and the administration and expansion had become defunct; there is

no restraint order either from this Court or for other Courts for convening of the Extraordinary General Body Meeting of the Society; that 16

members of the Society including respondents had proposed to convene the Extraordinary General Body Meeting to resolve these issues in the

best interests of the Society including conduct of election to the Executive Committee of the Society and served a notice to the

Secretary/Authorized Person as per Clause 9(a) of the bye-laws of the Society to convene an Extraordinary General Body Meeting; and the

petitioners are not entitled to ask for an injunction restraining the members from convening such Extraordinary General Body Meeting.

It was further stated that almost all the members have planned to reach India in time to attend the meeting, some of them had already reached India

to participate in the meeting and the petitioners had no prima facie case or balance of convenience in their favour and no irreparable injury would

be caused to the petitioners, if such ad-interim injunction is not granted.

8. The Respondents 2 to 4 also filed Additional Counters supporting 1st respondent.

9. Before the trial Court, the petitioners marked Exs. A-1 to A-49 and Exs. B-1 to B-37.

10. By order dt. 10-12-2013, the Court below dismissed I.A. No. 2310 of 2013.

11. The Court below held that the strength of the membership of the Society had been raised to 30 in the year 2004 itself in a General Body

Meeting held on 17-10-2004 presided over by 2nd petitioner as President of the then Executive Committee. It held that this fact is corroborated

by Ex. B-3 (Minutes of the General Body Meeting held on 22-10-2005) and Ex. B-5 (Information received from then Registrar under the Right to

Information Act 2005) which corroborated that the strength of members was increased to 30 and that it was also informed to the Registrar by the

Society on 25-11-2010. It also relied on Ex. B-29 (Copy of the affidavit in W.P. No. 3159 of 2009 filed by 2nd petitioner in this Court) wherein

he admitted that there were 30 members in the Society. It pointed out that even the copy of the Income Tax Return Ex. B-8 filed on 30-09-2012

showed the strength of the membership was 30. It held that Ex. B-5 indicated that the respondent Nos. 4 to 11 were also members.

12. It noticed from the pleadings that there was a serious dispute with regard to the convening of the General Body Meeting on 25-01-2013 and

with regard to the election of the petitioners to the Executive Committee; that the notice issued to convene the General Body Meeting and the

meeting held on 25-01-2013 were challenged in S.O.P. No. 44 of 2013 as illegal and void; that in S.O.P. No. 62 of 2013 filed by 4th respondent

also, the notice dt. 09-01-2013 calling for the General Body Meeting on 25-01-2013 was challenged apart from the election and other resolutions

passed in the said meeting.

13. It held that Exs. B-11 to B-27 showed that 17 members gave requisitions to convene Extraordinary General Body Meeting which were

addressed to the Secretary; that 7th petitioner also gave a requisition Ex. B-15 to convene Extraordinary General Body Meeting; that petitioner

Nos. 1 to 3 had filed S.O.P. No. 391 of 2013 to declare General Body Meeting held on 24-01-2013 (where the respondents claim to have been

elected as office bearers of the Executive Committee) as illegal and nonest and the election of the respondents as illegal and S.O.P. No. 409 of

2013 was filed by Dr. Yelamanchili Basaveswara Rao, to declare that respondent Nos. 4 to 11 are not members of the Society and to restrain the

respondents from claiming as members of the Executive Committee; that although there were 30 members of the Society, notices dt. 9.1.2013

were not given to all of them for the General Body Meeting held on 25-01-2013 in which the petitioners claimed to have got elected as members

of the Executive Committee of the Society; Exs. B-31 to 33, Souvenirs published by the Society for the years 2005, 2006 and 2009 containing the

names of respondents and their photographs as members of the Executive Committee and it supports the contention of the respondents and they

were actively associated with the management of the Society as members.

14. It therefore rejected the contention of the petitioners that the membership of the society was only 21; that it was not raised to 30 and that the

respondents were not members of the Society. It observed that although the strength of membership had been enhanced to 30 by the General

Body Meeting held on 17-10-2004, vide Ex. B-2, the bye-laws had not been amended and that such amendment is only a ministerial act to be

done later and the resolution would have effect. It therefore held that the petitioners had not proved any prima facie case or balance of

convenience and no irreparable injury would be caused to them if temporary injunction is refused.

15. Challenging the same this Civil Revision Petition is filed.

16. Heard Sri V. Venkataramana, learned Senior Counsel, appearing for M/s. Bharadwaj Associates, learned counsel for the petitioners; Sri D.V.

Sitarama Murthy, learned Senior Counsel, appearing for Sri C.S. Surya Prakash Rao, learned counsel for the respondent Nos. 1, 3 and 4 to 11;

Sri C.V. Mohan Reddy, learned Senior Counsel, appearing for Sri K. Jyoti Prasad, learned counsel for 2nd respondent; and Sri N.V.

Ramanujam, learned counsel for 10th respondent.

17. The learned counsel for the petitioners contended that the strength of the membership of the Society is only 26 as per the bye-laws of the

Society; that assuming for the sake of argument that the strength had been raised to 30, since the bye-laws have not been amended, the strength

cannot be taken as 30 as the resolution dt. 17-10-2004 (Ex. B-2) would not come into operation unless the bye-laws are amended. His

contended that respondents 4 to 11 are not members of the Society and their membership is under challenge in S.O.P. No. 409 of 2013 and

therefore they could not have given any requisition for convening of Extraordinary General Body Meeting on 16-11-2013 or in any other date; that

irrespective of whether the election of the petitioners or of the respondents is taken into account, as both the parties' election took place in the year

2013, the term of the election of the Executive Committee would be for a period of two years; therefore before the expiry of two years by the end

of January 2015, it was not open to conduct a fresh election to the Executive Committee; that the notice Ex. B28/dt. 31-10-2013 issued by 2nd

respondent containing agenda item No. 2 (which contemplated a possible election to the Executive Committee of the Society) to be taken up in the

said meeting to be held on 16-11-2013, is illegal because during the subsistence of the term of the existing Executive Committee and before its

expiry by the end of January 2015, another election to the Executive Committee cannot be held. He even contended that it would amount to

Contempt of Court, since permitting a fresh election to be held would render S.O.P. No. 176 of 2013 infructuous and thereby interfere with the

due course of justice in pending legal proceedings. He relied on Govind Sahai and Another Vs. State of U.P. and Another, in support of the said

plea. He further contended that an Extraordinary General Body Meeting can be convened only by Secretary as per bye-law 9(a); that 2nd

respondent had issued Ex. B-28/dt. 31-10-2013 and since he has not been recognized as Secretary by anybody, he was not competent to

convene Extraordinary General Body Meeting. He therefore contended that unless it is first decided as to whether 2nd petitioner or 2nd

respondent is the Secretary, no Extraordinary General Body Meeting can be allowed to be convened since such a meeting can only be convened

by a validly elected Secretary of the Executive Committee.

18. Per Contra, learned counsel for the respondents contended that there is no challenge to Ex. B-28 by petitioners on the ground that proper

procedure had not been followed before issuing it or that 2nd respondent, who issued it convening the Extraordinary General Body Meeting on

16-11-2013, had no authority to do so; that the Court below had rightly held that the membership strength had been raised to 30, even by 2004,

on the basis of evidence on record; that under the Act, there is no prohibition for an amendment to the bye-laws of a Society coming into effect,

without such amendment being registered under the Act; and therefore the resolution increasing the strength to 30 vide Ex. B-2 dt. 17-10-2004 is

itself sufficient to hold that the membership strength had been increased to "30" from "26" mentioned in the bye-laws of the Society; that

information about the raising of the strength of Society had been given by petitioners to the Registrar on 25-11-2010 itself as can be seen from Ex.

B-5, and it is up to the Registrar to carry out the amendment in the registered bye-laws. He contended that the Court below had rightly held that

respondent Nos. 4 to 11 have been inducted as members of the Society; that O.P. No. 409 of 2013 questioning their membership is pending and

there are no orders in the said O.P. restraining them from acting as members of the Society. He further contended that requisition has been given

by 17 members (including 7th petitioner) to call an Extraordinary General Body Meeting to discuss the items mentioned in agenda; that these

requisitions had been circulated to all the 30 members of the General Body of the Society; therefore, since the majority of the members of the

General Body i.e. 17 out of 30 have sent the requisitions Exs. B-11 to 27 seeking the holding of an Extraordinary General Body Meeting, the same

cannot be allowed to be restrained at the instance of the petitioners, whose election itself is not free from doubt.

19. In reply, the learned counsel for the petitioners contended that u/s 4 of the Act, the term "Memorandum of Association" includes bye-laws of

the Society also and therefore, u/s 8(3) of the Act, an alteration to the bye-laws would not be valid unless the alteration is registered under the Act

like in the case of the Memorandum of the Society. He also contended that in paras 19 to 23 of the affidavit filed in support of I.A. No. 2310 of

2013, the petitioners had specifically questioned the authority of 2nd respondent to issue Ex. B-28 notice dt. 31-10-2013 calling the Extraordinary

General Body Meeting on 16-11-2013. He further contended that under bye-law 7 and bye-law 9, a meeting of the General Body or an

Extraordinary Meeting of the General Body could be convened only by the "Secretary" on receipt of notice from the members of the Society;

since neither 2nd petitioner nor 2nd respondent is being accepted as the Secretary, there is no provision in the bye-laws for the holding of an

Extraordinary General Body Meeting. He pointed out that bye-law 9(b) of the bye-laws enables that, only in the case of failure of the Secretary to

convey the meeting, the members who had requested for such an Extraordinary Meeting may themselves convene a meeting, but not otherwise. He

further contended that strict compliance with the bye-laws is necessary.

20. I have noted the submissions of both sides.

21. The question for consideration is--""Whether the Court below was correct in declining to grant interim injunction in favor of the petitioners

restraining the convening of any general body meeting of the Society either on 16-11-2013 or any other date, pending disposal of the S.O.P. 176

of 2013""?

22. The Society in question is admittedly one registered under the provisions of the AP Societies" Registration Act, 2001. Its Memorandum of

Association and bye-laws (called "Rules and Regulations") have been registered with the District Registrar, Vijayawada. Bye-law 4(2)(a) of the

Bye Laws provides that there shall not be more than 26 members, unless and until the General Body of Academy decides unanimously otherwise

and any enhancement of the upper limit on the number of members shall come into force from such date as determined by the General Body.

23. Ex. B-2, Minutes of the General Body Meeting of the Society held on 17-10-2004, indicates that at a General Body Meeting presided over

by 2nd petitioner, the membership strength was raised from 26 to 30. This was reiterated in another General Body Meeting held on 22-10-2005

also presided over by 2nd petitioner. The Minutes of this meeting is Ex. B-3. Ex. B-5 is the letter dt. 25-11-2010 addressed by Dr. Raju N.

Mantena, Secretary of the Society to the Registrar with the list of 30 members mentioned in it. Ex. B-5 was obtained under the Right to

Information Act, 2005. This letter was received by him on 27.11.2010 (Ex. B6). Thus long before the present litigation commenced, the strength

of the membership had been raised from 26 to 30 in a general Body Meeting held on 17.10.2004.

24. But the Registrar, even though he has been informed of the increase in strength of the Society by the letter dt. 25-11-2010 referred to above,

did not carry out the amendment in the bye-laws registered with him. Section 8(5) of the Act provides that every alteration in the bye-laws of the

Society should be sent to the Registrar and he shall take it on record if it is not contrary to the provisions of the Act. Thus the Society had

complied with its obligation u/s 8(5) but the Registrar had not discharged his duty to take it on record. No doubt he shall take the alteration in the

bye-laws on record only if it is not contrary to the provisions of the Act, but it cannot be said that increase in strength of the subject Society is in

any way contrary to the provisions of the Act. There is no communication placed on record by petitioners to show that Registrar had declined to

take the amendment as regards the strength of the Society on record.

25. The question arises therefore whether the amendment would come into effect even if the alteration in the strength of membership provided in

bye-law 4(2)(a) of the registered Bye-laws of the Society is not registered/taken on record by the Registrar.

26. Section 8(3) of the Act states that any alteration of the Memorandum of the Society shall not be valid unless such alteration is registered under

the Act. But there is no similar provision enacted by the Legislature in the Act as regards alteration of the bye-laws of the Society. Had the

Legislature intended that an alteration to the bye-laws of the Society would not be valid unless such alteration is registered under the Act, it would

have made a provision similar to Section 8(3).

27. I do not agree with the contention of counsel for petitioners that "Memorandum of Association" of a Society includes "bye laws". Section 4(1)

of the Act directs that both of them be filed before the Registrar to secure registration of the Society. It does not include "byelaws" within

"Memorandum of Association".

28. Therefore prima facie, I am of the opinion that once the General Body of the Society had decided to increase the strength of membership of

the Society from 26 to 30, and communicated the same to the Registrar, the strength of the Society stands increased to 30 and bye-law 4(2)(a)

stands amended as if the number "26" mentioned therein is substituted by the number "30". Therefore, I am unable to accept the contention of the

counsel for the petitioners that the strength of the membership of the Society is 26 only and not 30. In Ex. B29, affidavit filed by 2nd petitioner in

the W.P. 3159 of 2009 in this Court also he mentioned the strength of membership of the society as 30.

29. The names of respondents 4 to 11 are mentioned in the letter dt. 25-11-2010 written by the then Secretary of the Society to the Registrar as

part of the 30 members list for the period 01-01-2005 to 31-12-2010. In fact, the names of respondents 3, 4, 6, 7, 9 and 11 are mentioned in Ex.

B-3, the Minutes of the General Body Meeting held on 22-10-2005 as having participated personally in the said meeting and the names of

respondents 2, 5 and 8 are shown as having participated through proxies in the said meeting. Also names of respondents 4 to 9 are mentioned in

Ex. B-4, the Minutes of the General Body Meeting held on 12-05-2007. Therefore prima facie the respondents 4 to 11 are members of the

Society and the mere fact that an O.P. No. 409 of 2013 was filed questioning their membership by one member Dr. Yelamanchili Basaveswar

Rao, does not imply that their membership is not valid. Therefore the contention of the counsel for the petitioners that respondent Nos. 4 to 11 are

not members of the Society, is liable to be rejected.

30. There is no dispute that 16 members including respondents 4 to 11 apart from the 7th petitioner gave a requisition to the 2nd respondent to call

the extra-ordinary General Body Meeting to discuss the three agenda items and that on the basis of the said requisitions, the 2nd respondent had

issued Ex. B-28 dt. 31-10-2013 notice convening an Extraordinary General Body Meeting on 06-11-2013.

31. One of the Agenda items (agenda item No. 2) for the said meeting mentioned in Ex. B28 notice is, for conducting an election to the various

offices of the executive committee afresh to resolve the conflicts/claims and counterclaims of petitioners and respondents.

32. The question is whether introducing this item as part of agenda, interferes with due course of justice as contended by counsel for the

petitioners. He contends that if such election is held, it would render S.O.P. No. 176 of 2013 infructuous since in the said O.P., the petitioners are

seeking a declaration that they are the duly elected office bearers of the Society in a General Body Meeting convened on 25-01-2013. In my

opinion, firstly, mere inclusion of this item as one of the items of agenda would not interfere with the due course of justice by rendering S.O.P. No.

176 of 2013 infructuous because, there is also a possibility that the said item would be not approved in the Extraordinary General Body Meeting.

33. In Govind Sahai (supra), relied upon by the counsel for the petitioners, the 2nd respondent before the Supreme Court, a member of the

Congress Party, filed a suit for declaration that an election to Congress Organization Body is void due to irregularities in the conduct of election.

The Working Committee of the Indian National Congress passed a resolution, the substance of which was that no member of the Congress Party

should take such a matter to law courts without availing redress in Tribunals provided within the party and to treat such a member who initiated a

litigation in law Court as having committed an act of indiscipline. Pursuant to this resolution, the 2nd respondent who had filed the suit, was

expelled from the Congress Party. He filed an application before the City Munsiff, Azamgarh, where the suit had been filed, for taking proceedings

in Contempt against the applicant before the Supreme Court. The said Court dismissed it but it was allowed by the High Court in Appeal. The

Supreme Court upheld the order of the High Court on the ground that the passing of orders of expulsion by the appellants against the 2nd

respondent indicated deliberate attempt to interfere with, or prejudice the 2nd respondent, in the conduct of litigation instituted by him. The

Supreme Court also relied upon its decision in Pratap Singh and Another Vs. Gurbaksh Singh, , where the Court had declared that initiation of

disciplinary proceedings against an employee of the State, who had challenged in a Civil Court an order for recovery of certain amounts from him,

passed against him by the department where he was employed, amounts to contempt.

34. In my opinion, the said decisions have no application to the present case. Firstly the respondents and the petitioners are all members of the

Society and neither of them holds a dominant position over the other, similar to a political party vis-à-vis its party member or an employer vis-

à-vis an employee. Secondly the action in these cases was taken for contempt on the ground that the 2nd respondent in Govind Sahai (supra)

and the employee in Pratap Singh (supra) were punished by the political party and the employer respectively, for having approached the ordinary

law courts for redress of their grievances and this was considered to be an act intended to interfere with the conduct of litigation instituted by them.

Such is not the situation here.

35. Merely because the Extraordinary General Body Meeting called at the instance of the 17 persons is allowed to go on, and a decision is taken

therein for holding of a fresh election, in my opinion, it does not interfere with the conduct of S.O.P. No. 176 of 2013. It might be that if such

election is held, the S.O.P. might become infructuous. But that would be because the cause of action in the O.P. would no longer survive for

adjudication. If the interpretation of the petitioners is to be accepted, the mere filing of a suit for injunctive relief would have the effect of the plaintiff

having an injunction order in his favor and any change in status quo by the defendants would be impermissible and contemptuous. Such is not the

law. Only if an ad interim injunction is granted by the Court in favor of the plaintiff, defendants cannot violate it by changing the status quo.

36. It is no doubt true that there is no material on record to show that the 2nd respondent is recognized unanimously by all the members as the

Secretary of the Executive Committee of the Society. It is also true that both an Annual General Body Meeting (provided in bye-law 7) and an

Extraordinary Meeting (in bye-law 9) have to be convened by a Secretary i.e. a validly elected Secretary.

37. The counsel for the petitioners submitted that, since there is no unanimously recognized Secretary, an Extraordinary General Body Meeting

cannot be held. He also contended that under bye-law 9 (b), only in the event of failure of the Secretary to convene an Extraordinary General

Body Meeting, the members calling for such a meeting, may by themselves convene a meeting; that in no other case can such a meeting be held

since the bye-laws do not provide for such a contingency. He contended that if the bye-law provides that a thing shall be done in a particular way,

it shall be done only in that way and in no other way.

38. I am unable to agree with the above contention of the petitioners. Membership of the Society only brings about a contractual relationship

among the members forming it subject of course to the Act and the rules Hyderabad Karnataka Education Society Vs. Registrar of Societies and

Others, . So bye-laws of the Society are not in the nature of a statute. Therefore the principle that unless the bye law provides for it, nothing can be

done, cannot be accepted.

39. In the present case the Society consists of 30 members of whom admittedly 17 members have sought for holding of an Extraordinary General

body meeting (Ex. B11-27). Thus when the majority of the members of the Society want an Extraordinary General body meeting to be held, and

sent a requisition to that affect to all the members, it cannot be said that such a meeting cannot be held merely because the bye-laws omitted to

provide for such a situation. As long as the bye-laws do not prohibit the holding of such a meeting, in my opinion, the meeting cannot be injuncted.

41. In Supreme Court Bar Association and Others Vs. B.D. Kaushik, the Supreme Court held that in matters of internal management of an

association such as one registered under the Societies Registration Act, 1860, Courts normally do not interfere, leaving it open to the association

and its members to frame a particular bye law, rule or regulation which may provide for eligibility and/or qualification for membership and/or

providing for limitations/restrictions on the exercise of any right by and as a member of the said association.

41. In situations such as the one in the present case also, when the Extraordinary General Body Meeting is being called to resolve internal

management issues/disputes to facilitate a smooth running of the affairs of the Society, in my opinion, it is not proper to grant an injunction

restraining convening of the meeting at the behest of the petitioners (who have wrongly pleaded that strength is only 26 and respondent Nos. 4 to

11 are not members).

42. As regards the plea of petitioners that both the meetings which took place on 25.1.2013 and 23/24.1.2013 (where the petitioners and

respondents each claim to have been elected to the Executive Committee positions respectively) and as term of the Executive Committee is 2

years, and therefore there is no need to hold a meeting for deciding to conduct fresh election till January 2015 is concerned, admittedly each side

disputes the other's election to the Executive Committee. In such a scenario, there is nothing wrong in the meeting being convened to take a

decision to resolve the issue.

43. For all these reasons, I do not find any error of jurisdiction or perversity in the order passed by the Court below warranting interference by this

Court under Art. 227 of the Constitution of India. So the Civil Revision Petition fails and is accordingly dismissed. No costs.