SUPREME COURT OF INDIA

Hindi Sahitya Sammelan

Vs.

Jagdish Sawarup

Writ Petn. No. 91 of 1964

(S. M. Sikri, C.J.I., G. K. Mitter, K. S. Hegde, P. Jaganmohan Reddy and V. Bhargava, JJ.)

23.02.1971

JUDGEMENT

BHARGAVA, J.:-

1. This writ petition and the appeal challenge the validity of the Hindi Sahitya Sammelan Act No. 13 of 1962 (hereinafter referred to as "the Act"). The facts leading up to the passing of this enactment are that, in the year 1910, some eminent educationists assembled at Banaras and founded an Association for the development of Hindi and its propagation throughout the country. This Association was named as the Hindi Sahitya Sammelan. On the 8th January, 1914, it was registered as a Society under the Societies Registration Act No. 21 of 1860, with Head Office at Allahabad, under the name of Hindi Sahitya Sammelan. The rules and bye-laws of the Society laid down the objects of this Association and the manner of its working. It had three classes of members, viz, special members (Vishisht Sadasya), permanent members (Sthayi Sadasya) and ordinary members (Sadharan Sadasya). Under the bye-laws, apart from the original members constituting the Society, further members could be admitted under those three classifications on being elected by the working committee of the Society. Under the Rules and bye-laws of the Society, other bodies could be constituted far carrying on activities of the Society. These included a Governing Body, a Working Committee, a Hindi University Council, Literary Council (Sahitya Samiti), Library Committee,

Parchar Samiti and Rashtriya Bhasha Prachar Samiti. Through the agencies of these various Committees, the Society carried on the work of development and propagation of Hindi, of spreading the use of Devnagri script, of holding examinations, and of conferring Degrees for proficiency in Hindi. The Society owned landed properties and buildings at Allahabad as well as at some other places such as Wardha, and was holing considerable funds for carrying on its activities. The Society worked very successfully for a number of years. It appears that in the year 1950, some differences arose between the members of the Society and attempt was made to alter the constitution of the Society. While one section wanted the alterations another section was opposed to It. This resulted in litigation. Three different suits were instituted in the civil courts at Allahabad in this connection and injunctions were sought by one party against the other. Ultimately, the Court appointed a Receiver.

2. In view of these circumstances, the U. P. Legislature passed an Act known as the U. P. Hindi Sahitya Sammelan Act No. 36 of 1956, under which a statutory body was created under the name of Hindi Sahitya Sammelan, and the word, " Sammelan" was defined as referring to the Hindi Sahitya Sammelan constituted under the Act. Under that Act, the management and properties of the original Hindi Sahitya Sammelan, which was a registered Society, were to be taken over by the new statutory Sammelan. That Act was, however, declared void by the Allahabad High Court on the ground that that Act had made the original Sammelan cease to exist and had provided for the constitution of a new Sammelan under its terms in which the members of the original Sammelan had no say, so that that Act infringed the right of the members of the original Sammelan of forming an association guaranteed by Art. 19 (l) (c) of the Constitution. It was further held that that Act was not saved under Art. 19 (4) of the Constitution. Thereafter, the present Act, now challenged in this writ petition and the appeal, was passed by Parliament under Entry 63 of List I of the Seventh Schedule to the Constitution. The Act itself, in Section 2, contained the necessary declaration to give legislative competence to Parliament under that Entry.

3. The Act first contained in Section 2 a declaration in the following words :

"Whereas the objects of the institution known as the Hindi Sahitya Sammelan which has its head office at Allahabad are such as to make the institution one of national importance. It is hereby declared that the institution known as the Hindi Sahitya Sammelan is an institution of national importance"

Having declared this institution as an institution of national importance, the Act proceeded to define "Sammelan" as meaning the institution known as the Hindi Sahitya Sammelan incorporated under this Act, while the word "Society, " was defined to mean "the Hindi Sahitya Sammelan which has its head office at Allahabad and is registered under the Societies Registration Act, 1860." Under Section 4 (1) of the Act, the Sammelan was constituted which was to consist of the first members of the Sammelan and all persons who may hereafter become members thereof in accordance with the rules made in that behalf. This statutory Sammelan was constituted as a body corporate by the name of the Hindi Sahitya Sammelan, and under sub-section (2) of Section 4, it was to have perpetual

succession and a common seal with power, subject to the provisions of the Act, to acquire, hold and dispose of property and to contract and to sue and be sued by that name. The Head Office of the Sammelan was to be at Allahabad. Under sub-s (4) of Section 4, the first members of the Sammelan were to consist of persons who, immediately before the appointed day, -

(a) were special members (Vishisht Sadasya) of the Society;

(b) were life members (Sthayi Sadasya) of the Society;

{c) had been Presidents of the Society; or

(d) were awarded the Mangla Prasad Paritoshik by the Society.

This sub-s. (4) of Section 4 was amended retrospectively with effect from the date that the Act came into force by the Hindi Sahitya Sammelan (Amendment) Act No. I of 1963, and the first members of the Sammelan were, under this amendment, declared to be -

(a) all persons who, immediately before the appointed day, were members of the Society,

(b) all persons who, before that day, had been Presidents of the Society; and

(c) all persons who, before that day, were awarded the Mangla Prasad Paritoshik by the Society

It is not necessary, to give in detail the other provisions of the Act, except that it may be mentioned that the Act provided for vesting of all property, movable or immovable, of or belonging to the Society in the Sammelan, transferring all rights and liabilities of, the Society to the Sammelan, converting reference to the Society in any law to the Sammelan, and other similar necessary provisions. The Act itself did not make any provision for the future membership of the Sammelan but under Section 12 (l) (a), the first Governing Body of the Sammelan was directed to make rules in respect of matters relating to membership, including qualifications and disqualifications for membership of the Sammelan. The first Governing Body was to be constituted under Section 8 and was to consist of a Chairman, a Secretary and 13 other members. This Governing Body was to be constituted by a notification in the Official Gazette by the Central Government. The thirteen members were to be chosen as follows:

(i) one member to represent the Ministry of the Central Government dealing with education;

(ii) one member to represent the Ministry of the Central Government dealing with finance;

(iii) not more than three members from among the former Presidents of the Society; and

(iv) the remaining number from among persons who are, in the opinion of the Central Government, eminent in the field of Hindi language or Hindi literature.

It was this first Governing Body which was to make rules on all matters relating to membership of the Sammelan under Section 12 (l) (a) of the Act. These rules were not to have effect until they were approved by the Central Government and were published by the first Governing Body in such manner as the Central Government may. by order, direct. A copy of the rules was also to be laid before each House of Parliament. Counsel for respondent No. 1 placed before us a copy of the rules which, according to him. have been made by the first Governing Body with the approval of the Government and have been published as required. The Rules come into force on 1st of February, 1971. The petition under Art. 32, and the petition under Art. 226, out of which the civil appea1 arises, were both moved much earlier and long before these Rules were framed. These petitions challenged the validity of the Act, without taking into account the actual Rules framed, mainly on the ground that the Act had interfered with the right of the petitioners to form association under Art. 19 (1) (c) of the Constitution and was not protected by Art. 19 (4). In the petition before the Allahabad High Court, that Court held that, since all the members of the Society had also become members of the Sammelan under the Act, there was no infringement of the right to form association, so that the Act could not be declared invalid on that ground. The writ petition in this Court has been filed by only one member of the Society, while the petition in the High Court and the appeal against the judgment of the High Court, which is before us, were filed by the original Hindi Sahitya Sammelan as one party and 72 members of that Sammelan joining as other petitioning parties. In the civil appeal thus the grievance that the Act has infringed the fundamental right has been put forward both by the Society itself as well as by 72 of its members, including members of the Working Committee and the Governing Body of the Society. They have all come up to this Court against the decision of the High Court in this appeal by special leave.

4. In the counter-affidavits filed on behalf of the respondents in the writ petition before the High Court as well as in the writ petition in this Court, the position taken up was that the Act, in fact, does not deprive the Society and its members of any rights which they had under the constitution of the Society and did not interfere with their right of association inasmuch as all the members of the Society: have been included as members of the Sammelan under the Act. The High Court, in fact, dismissed the writ petition on accepting this submission put forward on behalf of the respondents. In

the arguments before us, learned counsel for respondent No. 1, however, took up a different position and urged that the Act keeps the Society in-tact as it was, while a new Sammelan is constituted under the Act for the purpose of managing the institution which has been declared as an institution of national importance. He put this aspect of the case in the forefront, but, in the alternative, he also argued the case on the basis of the position taken up in the counter-affidavits in the High Court and in this Court as mentioned above. We consider it convenient to first deal with the case as was specifically put forward in the counter-affidavits. In these counter-affidavits, the position taken up is that, having declared the old Hindi Sahitya Sammelan, which was a Society registered under the Societies Registration Act, 1860, as an institution of national importance Parliament has proceeded to legislate in respect of it under Entry 63 of List I of the Seventh Schedule in order that its administration may not suffer as a result of the quarrels that were going on inter se between the members of the Society. It was for this purpose that a first Governing Body was constituted, to take over the management temporarily. The Act was designed to reconstitute the Sammelan in such manner that it could work successfully and without difficulties and, in making provision for this purpose, all members of the old Society were included as members of the Sammelan, so that their right of forming association may not be taken away from them. The Society was never dissolved, instead of the Society remaining a body registered under the Societies Registration Act, it was converted into a statutory Sammelan under the Act.

5. It, however, appears on examination of the provisions of the Act that the Sammelan under the Act is composed not only of persons, who were members of the Society, but of others who have been given the right to be members of the Sammelan without the consent of the pre-existing members. Under Section 4 (4) itself, as retrospectively amended in 1963, apart from persons, who were members of the Society, others, who have been made members of the Sammelan are all persons who, before that day had been Presidents of the Society and all persons who, before that day, were awarded the Mangla Prasad Paritoshik by the Society. These members have been added without any option being available to the existing members of the Society to elect or refuse to elect them as members which was the right they possessed under the constitution of the Society itself. Further, under Section 12 (l) (a), very wide powers were given to the first Governing Body to make rules in respect of matters relating to membership, including qualifications and disqualifications for membership of the Sammelan. Under this power, the rules framed could make provision for admission of persons as members whom the original members of the Society may never have liked to admit in their Society. The number of such new members could even be so large as to leave the original members in a small minority with the result that those members could become totally ineffective in the Society. Even in the Rules actually framed, there is provision for admission of members under various classes. In addition to the persons mentioned in Section 4 (4) of the Act, Rule 6 provides for membership of persons who may become Sabhapatis of the Sammelan for any annual session subsequent to the Act coming into force, and persons who may be awarded Mangla Prasad Paritoshik subsequent to the Act coming into force. Under Rules 7, 8 and 9, new Vishisht Sadasyas, Sthayi Sadasyas, and Sadharan Sadasyas can be admitted to the membership of the Sammelan on payment of Rs. l,000/- or Rs. 300/-, as the case may be. This admission to membership, according to the Rules, will be made by the new Karya Samiti to be elected under the Rules and not by the Working Committee of the original members of the Association. Further, under Section 7 (2) of the Act, the Governing, Body of the new Sammelan is to consist of such number of persons, not exceeding 55, as the Central Government may from time to time determine; and out of these, a number not exceeding 7 are to be nominated by the Central Government from among educationists of repute and eminent Hindi scholars. These 7 nominees are to be chosen by the

Central Government and on becoming members of the Governing Body, under Rule 11 they become members of the Sammelan. Under Rule 10, educational institutions can also be admitted as Sanstha Sadasyas of the Sammelan by the new Karya Samiti and, thereupon, a representative of each of such institution has a right to participate in the proceedings of the Sammelan, exercising all the rights of a member. It will, thus, be seen that the Sammelan, which has come into existence under the Act, is not identical with the Sammelan which was registered as a Society under the Societies Registration Act, 1860. Certain persons have been added as members by the Act and by the Rules. Admission of future members is no longer at the choice of the original members who had formed the Association. Persons, in whose admission as members the members of the Society had no hand, can become members and get the right of associating with them in the Sammelan, without the original members having any right to object. This is clear interference with the right to form an association which had been exercised by the members of the Society by forming the Society with its constitution, under which they were members and future members could only come in as a result of their choice by being elected by their Working Committee. We are unable to agree with the High Court that the new Sammelan, as constituted under the Act, is identical with the Society and that all the rights of forming an association, which were being exercised by members of the Society, have been kept intact under the Act.

6. It was argued that the right guaranteed by Article 19 (1) (c) is only to form an association and, consequently, any regulation of the affairs of the Association, after it has been formed, will not amount to a breach of that right. It is true that it has been held by this Court that, after an Association has been formed and the right under Article 19 (1) (c) has been exercised by the members forming it they have no right to claim that its activities must also be permitted to be carried on in the manner they desire. Those cases are, however, inapplicable to the present case. The Act does not merely regulate the administration of the affairs of the Society; what it does is to alter the composition of the Society itself as we have indicated above. The result of this change in composition is that the members, who voluntarily formed the Association, are now compelled to act in that Association with other members who have been imposed as members by the Act and in whose admission to membership they had no say. Such alteration in the composition of the Association itself clearly interferes with the right to continue to function as members of the Association which was voluntarily formed by the original founders. The right to form an association, in our opinion, necessarily implies that the persons forming the Association have also the right to continue to be associated with only those whom they voluntarily admit in the Association. Any law, by which members are introduced in the Voluntary Association without any option being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association. If we were to accept the submission that the right guaranteed by Art. 19 (1) (c) is confined to the initial stage of forming an Association and does not protect the right to continue the Association with the membership either chosen by the founders or regulated by rules made by the Association itself, the right would be meaningless because, as soon as an Association is formed, a law may be passed interfering with its composition, so that the Association formed may not be able to function at all. The right can be effective only if it is held to include within it the right to continue the Association with its composition as voluntarily agreed upon by the persons forming the Association. This aspect was recognised by this Court, though not in plain words, in the case of G. K Ghosh v. E. X Joseph, (1963) Supp 1 SCR 789 = (AIR 1963 SC 812). The Court, in that case was considering the validity of Rule 4-B of the Central Civil Services (Conduct) Rules, 1955, which laid down that:

"No Government servant shall join or continue to be a member of any Service Association of Government servants:

(a) which has not, within a period of six months from its formation, obtained the recognition of the Government under the Rules prescribed in that behalf, or

(b) recognition in respect of which has been refused or withdrawn by the Government under the said Rules".

This Court held: -

"It is not disputed that the fundamental rights guaranteed by Article 19 can be claimed by Government servants. Article 33 which confers power on the Parliament to modify the rights in their application to the Armed Forces, clearly brings out the fact that all citizens, including Government servants, are entitled to claim the rights guaranteed by Article 19. Thus, the validity of the impugned rule has to be judged on the basis that the respondent and his co-employees are entitled to form Associations or Unions. It is clear that Rule 4-B imposes a restriction on this right. It virtually compels a Government servant to withdraw his membership of the Service Association of Government Servants as soon as recognition accorded to the said Association is withdrawn or if, after the Association is formed no recognition is accorded to it within six months. In other words the right to form an Association is conditioned by the existence of the recognition of the said Association by the Government. If the Association obtains the recognition and continues to enjoy it, Government servants can become members of the said Association if the Association does not secure recognition from the Government or recognition granted to it is withdrawn, Government servants must cease to be the members of the said Association. That is the plain effect of the impugned rule".

The Court in the above passage, thus, accepted the principle that the Government servants, who may have formed an Association could not be compelled to resign from it by imposition of a condition of recognition of this Association by the Government and that, if the Government servants are required to cease to be members, that would be a violation of the right under Article 19 (1) (c). The Court, of course, in that case, further proceeded to examine whether such a restriction on the right could be justified under Article 19 (4) or not. That case, thus, supports our view that the right to form an Association includes the right to its continuance and any law altering the composition of the Association compulsorily will be a breach of the right to form the Association.

7. This Court had also proceeded on the same basis in the case of State of Madras v. V G. Row, 1952 SCR 597 = (AIR 1952 SC 196). Though this aspect was not clearly brought out in the

judgment, the point, which came up for consideration, was decided on the basis that persons forming an Association had a right under Article 19 (1) (c) to see that the composition of the Association continues as voluntarily agreed to by them. That decision was given in an appeal from a judgment of the High Court of Madras reported in V. G. Row v. The State of Madras, AIR 1951 Mad 147 (FB). In the High Court. this principle was clearly formulated by Rajamannar, C. J., in the following words:

"The word "form" therefore must refer not only to the initial commencement of the association, but also to the continuance of the association as such".

The Act, insofar as it interferes with the composition of the Society in constituting the Sammelan, therefore, violates the right of the original members of the Society to form an association guaranteed under Article 19 (1) (c).

8. Article 19 (4), on the face of it; cannot be called in aid to claim validity for the Act. Under Article 19 (4), reasonable restrictions can be imposed only in the interests of the sovereignty and integrity of India, or in the interests of public order or morality. It has not been contended on behalf of the respondent nor could it be contended that this alteration of the constitution of the Society in the manner laid down by the Act was in the interests of the sovereignty and integrity of India, or in the interests of public order or morality. Not being protected under Article 19 (4), it must be held that the provision contained in the Act for reconstituting the Society into the Sammelan is void. Once that section is declared void, the whole Act becomes ineffective inasmuch as the formation of the new Sammelan is the very basis for all the other provisions contained in the Act.

9. In view of this position emerging in the course of arguments. Mr. B. Sen put forward an entirely different and alternative case before us which we have mentioned earlier. The position he took up was that the Act nowhere specifically lays down that the Society shall stand dissolved, while it does constitute a new Sammelan. According to him therefore, it should be inferred that, while the Society still continues to exist in its original form, the law has brought into existence a new Sammelan to which all the functions, properties etc. of the Society have passed under the Act. There are three reasons why this alternative submission cannot be accepted as ensuring the validity of the Act. The first is that the specific case taken by the respondents has been that the Act reconstitutes the Society and does not create a separate and independent body in the form of a new Sammelan Secondly, even if it be accepted that a new Sammelan has been constituted by the Act, the question will arise of the legislative competence of Parliament to pass such a law. Constitution of Societies is under list II of the Seventh Schedule Parliament purported to exercise legislative power under Entry 63 of List I on the basis of a declaration that the Hindi Sahitya Sammelan Allahabad was an institution of national importance. The Institution that was declared was the Society itself. It was not a case where the Society could be distinguished from some other institution which might have been declared as an institution of national importance. There can, of course, be cases where a Society may be running a college, a school or some other like Institution, in which case Parliament may declare that particular institution as of national importance, without declaring the Society as such. In the present case, what Section 2 of the Act did was to declare the Society itself as an institution of national importance

and, consequently, Parliament became competent to legislate in respect of the Society. On the interpretation now sought to be put forward, the Act keeps that Society intact, but deprives it of all its functions and properties and transfers them to a newly constituted body viz, the Sammelan, as defined uncle the Act. This Sammelan is itself, body corporate, and that Sammelan has never been declared as an institution of national importance. The only institution that was declared as of national importance was the Society which, of course, earlier, carried the same name as the new Sammelan. Parliament was, therefore, not competent to legislate in respect of this newly constituted Sammelan which, at no stage, had been declared as an institution of national importance. The third reason why this submission must be rejected is that, if we were to hold that Parliament passed this Act so as to transfer all the properties and assets of the Society to the Sammelan, the Act would contravene Article 19 (1) (f) of the Constitution. On this interpretation, what the Act purports to do is to take away all the properties of the Society, leaving the Society as an existing body, and give them the new Sammelan. This Sammelan is a new, separate and distinct legal entity from the Society. The Society is, thus, deprived of all its properties by the Act. Such a law depriving the Society of its properties altogether cannot be held to be a reasonable restriction in the public interest on the right of the Society to hold the property. The property, under Section 5 of the Societies Registration Act, 1860, vested in the Governing Body of the Society. The members of the Governing Body, therefore. had the right to hold the property under Article 19 (1) (f) and they having been deprived of that property, have rightly approached the Courts for redress of their grievance.

10. In this connection, counsel for the respondents relied on the decision of this Court in Board of Trustees, Ayurvedic and Unani Tibia College, Delhi v. The State of Delhi (1962) Supp 1 SCR 156 = (AIR 1962 SC 458) where the Board of Trustees of the Ayurvedic and Unani Tibia College, Delhi was dissolved by the Tibia College Act, 1952, and the Property, which had vested in the Board of Trustees, passed to the newly constituted Board under the impugned Act. The Court held that there was no violation of the fundamental rights guaranteed by Article 19 (1) (f) or Article 31. That decision, however, proceeded on the basis that the property of the original Society registered under the Societies Registration Act had vested in the Board of Trustees which had been dissolved and the property, thereafter, did not vest in the members of the Society in view of the provisions of the Act of 1860. In these circumstances, it was held that no one could complain that his right to property under Article 31 or his right to hold the property under Article 19 (1) (f) had been violated by the impugned Act. In the present case, the applicability of Article 19 (1) (f) is being considered by us on the assumption that the old Society still exists as it was and, yet, all its properties have been transferred to the Sammelan. If the Society still exists so does its Governing Body in whom the property of the Society vested. The Act, thus, deprives the members of the Governing Body of the property, which still continued to vest in them in spite of the passing of the Act. This total deprivation of property instead of regulating the management of the affairs of the Society or its properties, cannot clearly be justified as a reasonable restriction in public interest. It is true that, at the time when the Act was passed, litigation was going on between the members of the Society, and the affairs of the Society were probably in a mess. The remedy however, could not lie in depriving the Society of its property altogether. Reasonable restrictions could have been imposed so as to ensure the proper preservation of the property of the Society and its proper management. If the law is passed not merely for ensuring proper management and administration of the property, but for totally depriving the persons, in whom the property vested, of their right to hold the property, the law cannot be justified as a reasonable restriction under Article 19 (5). Consequently, even on this alternative position taken up by counsel for the respondents, the Act cannot be held to be valid.

11. As a result, the petition and the appeal are both allowed with costs. The Act is declared to be invalid, so that there will be restraint on the concerned bodies, including the Union Government, from taking or continuing any action under the Act. There will be one hearing fee.

Petition and appeal allowed