

Nagri Pracharini Sabha and Another

Vs

Vth Additional District and Sessions Judge, Varanasi and Others

Civil Appeal No. 2483 of 1982

(Ranganath Misra, M. M. Punchhi, K. Ramaswamy JJ)

22.08.1990

JUDGMENT

1. Appellant is a Society registered under the Societies Registration Act, 21 of 1860. Five persons of whom some are respondents before us instituted a suit in the Court of Civil Judge, Varanasi challenging the election of the Managing Committee and other elected officers of the appellant and asked for rendition of accounts. This suit of 1981 is still pending. We are now concerned with the correctness of the finding on the preliminary issue as to whether such a suit is maintainable in the civil court. The defendants' objection to the maintainability is grounded upon the provisions contained in Sections 23 and 25 of the Registration Act. The courts below have taken the view that the suit is not barred. That is why the defendants are here by special leave.

2. A litigant having a grievance of a civil nature has, independently of any statute, a right to institute a suit in the civil court unless its cognizance is either expressly or impliedly barred. The position is well settled that exclusion of jurisdiction of the civil court is not to be readily inferred and such exclusion must be either express or implied.

3. Reliance has been placed by Mr Mukhoty before us on the ratio of the Constitution Bench decision of this Court in *K.S. Venkataraman & Co. v. State of Madras* [(1966) 2 SCR 229 : AIR 1966 SC 1089] where reference has been made to the Privy Council case in *Raleigh Investment Co. Ltd. v. Governor-General in Council* [AIR 1947 PC 78 : 49 Bom LR 530]. It has been laid down that the civil court's jurisdiction would be presumed unless the contrary is indicated. Mr Mukhoty has also relied upon two other decisions being *Ganga Bai v. Vijay Kumar* [(1974) 2 SCC 393 : (1974) 3 SCR 882] and *Dhulabhai v. State of M.P.* [(1968) 3 SCR 662 : AIR 1969 SC 78]. The legal position thus seems to be clear and it is not necessary to quote further authorities.

4. What is really in dispute is the application of the rule to the facts of the case. To ascertain whether the suit would be barred, the effect of the provisions of Sections 23 and 25 of the Registration Act with the U.P. amendments has to be considered. These sections provide :

"23. Audit. - (1) Without prejudice to the provisions of sub-section (2) of Section 4 or of Section 22, where the Registrar is of opinion that it is necessary or expedient so to do, he may, by written order, require any society to furnish its accounts or a copy of a statement of receipts and expenditure for any particular years duly audited by a Chartered Accountant :

Provided that the Registrar may, at the request of society permit it to have such accounts and statement audited by any other person by him.

(2) If the society fails to furnish the documents referred to in sub-section (1) within the period specified in the order or with such extended period as the Registrar may from time to time allow, the Registrar may cause the accounts of such society audited for the said year and may recover the cost of such audit from that society.

(3) If the society neglects or refuses to make its account or other documents available for audit under sub-section (2) or, in the opinion of the Registrar, otherwise fails to provide requisite facilities to have the audit made with due expedition, the Registrar may proceed to take action under Section 24.

25. Disputes regarding election of office bearers. - (1) The prescribed authority may, on a reference made to it by the Registrar or by at least one-fourth of the members of a society registered in Uttar Pradesh, hear and decide in a summary manner any doubt or dispute in respect of the election or continuance in office of an officer bearer of such society, and may pass such orders in respect thereof as it deems fit :

Provided that the election of an office bearer shall be set aside where the prescribed authority is satisfied :

(a) that any corrupt practice has been committed by such office bearer; or

(b) that the nomination of any candidate has been improperly rejected; or

(c) that the result of the election insofar as it concerns such office bearer has been materially affected by the improper acceptance of any nomination or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with the provisions of any rules of the society.

Explanation 1. - A person shall be deemed to have committed a corrupt practice who directly or indirectly, by himself or by any other person -

(i) induces, or attempts to induce, by fraud, intentional misrepresentation, coercion or threat of injury, any elector to give or to refrain from giving a vote in favour of any candidate, or any person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at the election;

(ii) with a view to inducing any elector to give or to refrain from giving a vote in favour of any candidate, or to inducing any person to stand or not to stand as, or to withdraw or not to withdraw from being, a candidate at the election, offers or gives any money, or valuable consideration, or any place of employment, or holds out any promise of individual advantage or profit to any person;

(iii) abets (within the meaning of the Indian Penal Code) the doing of any of the acts specified in clauses (i) and (ii);

(iv) induces or attempts to induce a candidate or elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure;

(v) canvasses on grounds of caste, community, sect or religion;

(vi) commits such other practice as the government may prescribe to be a corrupt practice.

Explanation II. - A 'promise of individual advantage or profit to a person' includes a promise for the benefit of the person himself, or of any one in which he is interested.

Explanation III. - The State Government may prescribe the procedure for hearing and decision of doubts or disputes in respect of such elections and make provision in respect of any other matter relating to such elections for which insufficient provision exists in this Act or in the rules of the society.

(2) Where by an order made under sub-section (1), an election is set aside or an office bearer is held no longer entitled to continue in office or where the Registrar is satisfied that any election of office bearers of a society has not been held within the time specified in the rules of that society, he may call meeting of the general body of such society for electing such office bearer or office bearers, and such meeting shall be presided over and be conducted by the Registrar or by any officer authorised by him in this behalf, and the provisions in the rules of the society relating to meetings and elections shall apply to such meeting and election with necessary modifications.

(3) Where a meeting is called by the Registrar under sub-section (2), no other meeting shall be called for the purpose of election by any other authority or any person claiming to be an office bearer of the society.

Explanation. - For the purposes of this section, the expression 'prescribed authority', means an officer or court authorised in this behalf by the State Government by notification published in the official Gazette."

We are of the view that provisions of Section 23 are confined to audit and have nothing to do with the relief of rendition of accounts. No more is necessary to be said about that relief. Section 25 deals with disputes regarding challenge to the election of office bearers. The maintainability of dispute within the purview of that section is hedged with conditions and unless such requirement is fulfilled, a statutory dispute would not be maintainable. The present action in the civil court is by some of the members who perhaps would not satisfy the requirements laid down in Section 25. It cannot be contended that Section 25 having provided the pre-conditions on the satisfaction of which a dispute within the purview of that section would be maintainable before the Registrar takes away the right of members of the Society to claim relief otherwise outside the purview of Section 25 on the basis of their right to seek remedy for their grievance. It is not the contention of Mr Mukhoty that the relief claimed is not one which would come within the ambit of Section 9 of the Code of Civil Procedure. That being so, we are of the view that the bar of Section 25 is not applicable to the facts of the case. Therefore, the conclusion reached in the courts below is correct and the suit is maintainable.

5. We pointed out to Mr Mukhoty that the relief against election of office bearers must have become infructuous with the passage of time as the election is annual. It is for the trial court now to dispose of the suit taking into consideration the changes in the situations that may be brought before it. We dismiss the appeal and direct the trial court to expedite the disposal of the suit. No costs.

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