

SUPREME COURT OF INDIA

D. Dwarakanantha Reddy

Vs

Chaitnya Bharathi Educational Society and Others

Appeal (Civil) 2197 of 2007

(C. K. Thakker and Altamas Kabir, JJ)

27.04.2007

JUDGMENT

C. K. THAKKER, J.

1. Leave granted.

2. All these appeals arise out of a common judgment and order passed by the High Court of Judicature, Andhra Pradesh at Hyderabad on January 2, 2007 in Civil Revision Petition Nos. 6269, 6353 and 6301 of 2006. By the said order, all the Revision Petitions were dismissed by the High Court and the order passed by the Court of IInd Additional Chief Judge, City Civil Court, Hyderabad on December 1, 2006 in I.A. Nos. 4192 and 4194 of 2006 in O.P. Nos. 20070 of 2006 and 2146 of 2006 is confirmed.

3. Short facts giving rise to the present litigation are that M/s Chaitanya Bharathi Educational Society ('Society' for short) was registered in the year 1979 under the Andhra Pradesh (Talengana Area) Public Societies Registration Act, 1350 Fasli, vide Registration No. 964 of 1979. Its objects as specified in the Memorandum of Association are

(a) To establish, manage, aid and maintain educational and other institutions, to impart education and training at all stages for the promotion of Engineering, Medicine, Pharmacy, Agriculture, Commerce, Literature, Arts and Sciences and Management and other subjects and allied activities for diffusion of useful knowledge and training, specially to instill self-confidence, creative thinking and entrepreneurship in the students and trainees.

(b) To devise ways and means and accord facilities for candidates to specialize in all or any of the above subjects (i.e.) to develop Centres of excellence for research in the above subjects with Industrial Orientation.

(c) To act as a Trust Board to accept endowments, bequests, donations, subscription, grants from institutions, both Private and Public, Corporate bodies, and Government and other transferee of property made to the Society and administer them on the terms agreed to.

(d) To try to offer medical and clinical facilities to the needy by opening the necessary hospitals, aid clinical laboratories or X-Ray Institutions, and to run, maintain Homes, Residential Houses etc., for the needy either by purchasing the necessary equipment or by approaching such institutions or the Governments including those of other Countries, for donation of such equipment and the land and buildings necessary for locating such equipments and Institutions.

(e) To offer consultancy services in any area directly or through the Institutions owned and managed by the Society.

(f) To carry on activities for any other charitable purposes and activities of General Public Utility.

4. There were 13 Founding Members who then constituted General Body as well as Governing Council/Executive Body who were distinguished persons from various professions. The Articles of Association of the first respondent-society enumerate categories of membership in Clause 4 as (i) Patron, (ii) Promoter, (iii) Donor; and (iv) Member (ordinary member). Clause 5 provides for termination of membership. Whereas functions of the General Body have been specified in Clause 7, functions of the Board of Governors have been dealt with in Clause 11. Sub-clause (i) thereof enacts that the Board of Governors 'have the power to admit new members of the Society on a proposal sponsored by at least two members of the Board of Governors'. Clause 12 relates to meetings of the Board of Governors.

5. It is the case of the appellants that in exercise of power under Clause 11(i) of the Articles of Association, the Board of Governors on January 20, 2000 resolved to induct nine persons as Promoter-Members into the General Body of the Society. It was unanimous decision of the Board. It was also their case that the resolution was subsequently accepted and approved by the General Body of the first respondent-society in its meeting dated March 22, 2006. Thus, the appellants had become and continued to remain as Promoter-Members of the society. They are, therefore, entitled to participate in the election of Board of Governors as per the Memorandum and Articles of Association. The appellants stated that they received a caveat from the first respondent-society on

October 23, 2006 stating therein that their claim as Promoter-Members of the society and insisting and calling for General Body Meeting was not tenable because the very admission of the appellants as Promoter- Members was null and void. It was further stated by the appellants that on October 24, 2006, 118th Meeting of the Board of Governors of first respondent-society was convened. Under Item No. 4 (any other item), induction of admission of nine persons was questioned. It was resolved that the appellants could not be said to be legally inducted members and their induction was totally illegal and unlawful. The resolution dated January 27, 2000 was merely a 'proposal' with a condition that nine persons would be admitted as members at an appropriate time. The resolution dated March 22, 2006 passed by the General Body of the Society admitting them as Promoter-Members was without authority and null and void. A consequential letter was written by the Secretary of the Society that the admission of the appellants as Promoter-Members was invalid and illegal and they were not eligible to be members of the society.

6. Being aggrieved by the above resolution, the appellants filed Original Petition in the Court of Chief Judge, City Civil Court, Hyderabad for a declaration that they were legally inducted members and were entitled to participate in the management and administration of the Society. A prayer was also made to grant permanent injunction from conducting election to the Governing Body without including the appellants. The appellants also filed application for interim injunction under Order 39, Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') restraining the first respondent from holding election of the Governing Body of the first respondent- society without including Promoter-Members and without giving them opportunity of participating the election process.

7. The learned Hon'ble Additional Chief Judge, City Civil Court vide an order dated December 1, 2006 dismissed the application inter alia observing that no prima facie case had been made out by the petitioners-appellants herein and they could not be granted interim relief as sought. Ad interim relief of status quo which was granted on October 30, 2006 was vacated.

8. Being aggrieved by the order passed by the trial Court, the appellants preferred Revision Petitions. The High Court, as observed earlier, dismissed all Revision Petitions holding that the trial Court was right in dismissing the application as no prima facie case had been made out. The High Court also directed the trial Court to dispose of Original Petitions within a period of three months from the date of receipt of the copy of the order. The above order has been challenged by all the appellants in this Court.

9. On January 10, 2007, this Court stayed operation of the impugned order passed by the High Court till January 19, 2007 which was the date fixed for admission-hearing. On January 19, 2007, notice was issued and parties were directed to file affidavits and further affidavits. On March 2, 2007, the matter was ordered to be placed for hearing. We have accordingly heard learned counsel for the parties.

10. The learned counsel for the appellants contended that the Board of Governors admitted the appellants as Promoter-Members as early as in the year 2000. In an Emergency Meeting of the

General Body held on March 22, 2006, the action was approved by the General Body. Neither the Memorandum of Association nor Articles of Association had imposed a condition precedent for payment of Rs.1 lakh for becoming a Promoter-Member. Non-payment of an amount of Rs.1 lakh, therefore, cannot be made a ground to expel or remove the appellants as Promoter-Members. Even otherwise, appellants had never refused to pay the said amount.

11. It was also submitted that no notice was issued by the Society to show cause why the Membership of the appellants should not be terminated or discontinued, nor an opportunity of hearing was afforded, nor principles of natural justice were observed. The impugned action taken by the respondents on October 24, 2006 treating the membership of the appellants as void was non-est. The action was also bad in law inasmuch as the resolution admitting the appellants as Promoter-Members was taken by the Board of Governors and accepted by the General Body. Resolution dated October 24, 2006 was passed by the Board of Governors which is a body subordinate to the General Body. It, therefore, could not have interfered with the action of the General Body.

12. It was also submitted that there were amendments in the Articles of Association in the year 1981 which provided induction of eminent persons as Promoter-Members without payment of any amount. All the appellants are 'eminent' in their respective fields and they are entitled to continue as Promoter-Members.

13. It was also contended that apart from the fact that Articles of Association prescribed no time limit within which a payment of Rs.1 lakh was to be made, even respondents were of the same opinion. It was thus a case of mutual mistake for which appellants cannot be blamed. The appellants were always treated as Promoter-Members which fact is proved from various photographs and reports. It was alleged that the action was mala fide and has been taken in colourable exercise of power with a view to deprive the appellants from participating in the next election. The counsel further stated that in any case, the payment has already been made by the appellants and that fact ought to have been considered by the Courts and relief ought to have been granted in their favour. On all these grounds, the appeals deserve to be allowed by setting aside the order passed by the trial Court and confirmed by the High Court by continuing the appellants as Promoter-Members.

14. The learned counsel for the respondents supported the action taken by the Society and the orders passed by the Courts below. It was submitted that the appellants were never appointed as Promoter-Members and the action which was taken by the Board of Governors in its 85th Meeting dated January 27, 2000 was in the nature of mere proposal to induct the appellants as Promoter-Members. Formal decision admitting them as Members had never been taken. It was also submitted that the language of Article 4 (i)(b) is explicitly clear and provides that an applicant who 'pays' Rs.1 lakh would become a Promoter Member. It is thus clear that a person, before he can become Promoter-Member, must 'pay' an amount of Rs.1 lakh. Admittedly, no such payment was made in 2000 nor in March, 2006 when the so-called approval was granted by the General Body. Even on October 26, 2006, the amount was deposited by the appellants directly in the Bank without even informing the Society and that was done after the resolution was passed on October 24, 2006.

15. According to the learned counsel, it was not a case of removal, termination or expulsion of a Member and hence there was no question of issuing notice, calling for explanation or affording opportunity of hearing or observance of principles of natural justice or fair play. Since the appellants

had never become Promoter- Members, what was done on October 24, 2006 was to make it clear that their so called membership was void and of no effect. Reliance was placed on Hyderabad Karnataka education Society v. Registrar of Societies & Others, \diamond : \diamond : \diamond .

16. According to the learned counsel, it was not a case of mutual mistake. The relevant clauses of Articles of Association were unambiguous and since no payment was made as required, no right accrued in favour of the appellants and the action of the Society was legal and lawful.

17. As to amendment of 1981, it was submitted that no such amendment was made nor it was brought into force. It was, therefore, submitted that the action of the Society was strictly in consonance with law. The main matter is pending before the City Civil Court and it will be decided on its own merits, but, taking into account admitted facts and documentary evidence, if the trial Court had not granted interim relief and the said order was confirmed by the High Court, it cannot be said that any illegality has been committed which deserves interference under Article 136 of the Constitution Of India, 1950. It was, therefore, prayed that the appeals deserve to be dismissed.

18. Having heard learned counsel for the parties, in our opinion, neither the trial Court nor the High Court had committed any illegality in refusing interim relief. So far as the action taken by the respondent-Society is concerned, our attention has been invited by the counsel for the parties to the Memorandum of Association as also to the Articles of Association. We have already extracted the objects for which the Society has been set up. Clause 4 of the Articles of Association provides for Membership of Society and reads thus:

4.MEMBERSHIP

The Society shall consist of the following Classes of membership.

(i)(a) PATRON

Any person, who pays a sum of Rs.5 lakhs or more in one lump sum or Rs.3 lakhs in one instalment and the balance in two equal yearly instalments, shall be called 'Patron' of the Society with hereditary rights under the Laws of Primogeniture. Any person who fails to pay the subsequent instalments within the specified time, i.e., second instalment of Rs. one lakh before the end of first year, third instalment of Rs.one lakh before the end of second year, from the date of the payment of the first instalment of Rs.3 lakhs, they will not be entitled for privileges of Patron Member and shall be treated as a Promoter Member only from the date of default in payment.

(b) PROMOTER

Any person who pays a sum of Rs. one lakh or more but less than Rs.5 lakhs shall be called 'Promoter' with hereditary rights under the Laws of Primogeniture.

(c) DONOR

Any person who pays a sum of Rs.50, 000/- or more but less than Rs. one lakh shall be called 'Donor' and their membership in the Society is for a period of twelve years only.

(d) MEMBER

(i) Any person who pays Rs.20, 000/- or more but less than Rs.30, 000/- shall be called 'Member' and is to be treated as Member for a period of twelve years. This class of membership shall be restricted to only two hundred members.

(ii) Any change in the scale of fee or qualification of membership made in these presents shall take effect only from the date of adoption of these Articles as amended and shall not affect the Status or scale of fee paid by members enrolled previously unless such member ceases to be the Member of the Society for any reason whatsoever.

(iii)(a) Firms, Institutions, Associations or Groups of Persons are also entitled for the membership to any of the classes mentioned above and shall be entitled to nominate one representative on their behalf to the General Body and such person once nominated shall represent in the General Body during the tenure of the membership of such Firm, Institution, Association or Group of Persons.

(b) Any such nomination shall be valid for a minimum period of three years in the case of a member of Body of Governors and in any other case for a minimum period of one year.

(iv) GENERAL

The name of the Chief Patron, Patrons and Promoters and Donors will be exhibited at the appropriate places of the Institutions as decided by the Board of Governors.

19. Clause 5 relates to 'Termination of Membership'. Clauses 6, 7 and 8 deal with General Body, its functions and meetings to be convened. Clause 9 declares that management is vested in the Board of Governors constituted under Clause 10. Functions of the Board of Governors have been mentioned in Clause 11. Sub- clause (i) of Clause 11 empowers the Board to admit new members of the Society on a proposal sponsored by at least two members of the Board of Governors.

20. Reading of the Minutes of 85th meeting of the Board of Governors of the Society makes it clear that certain matters were taken up for consideration. Item No.2 related to proposals sponsoring Promoters- Members. The relevant part thereof reads thus: ITEM NO.2 The Board members gave

eleven proposals sponsoring promoters to Chaitanya Bharathi Educational Society as per the clause 4 (i) (b) and 11 (i) of Articles of Association out of whom nine promoters were unanimously chosen as listed below:

(1) Dr. H. Prabhakar Reddy

(2) Dr. D. Dwarakanath Reddy

(3) Sri N. Subhash

(4) Sri B. Chandrasekhar Reddy

(5) Dr. B. Avanendra Reddy

(6) Sri D. Praveen Reddy

(7) Sri P. Chandradhar Reddy

(8) Sri V.V. Sridhar Rao

(9) Sri Konda Viswaswara Reddy

The above candidates constitute a panel of promoters selected and will be inducted into General Body as per the constitution of Chaitanya Bharathi Educational Society.

21. It is thus clear that nine persons were selected and as stated in the minutes, they "will be inducted" into General Body as per the Constitution of the Society. It is not even the case of the appellants that they had paid an amount of Rs.1 lakh before or on January 27, 2000. In fact, from the record it is clear that in 2006 when a meeting of the General Board was convened on March 22, 2006 and the action of the Governing Board was accepted, such amount was not paid by the appellants. Even on October 24, 2006, when 118th meeting of the Board of Governors of the Society was convened, it was stated that the appellants had not paid an amount of rupees one lakh for becoming a Promoter-Member and hence a resolution passed by the Board of Governors of the Society on January 27, 2000 inducting them as 'Promoter Members' and also a resolution, dated March 22, 2006 passed by the General Body could not be said to be legal and the action was nullity. It was also observed that the so-called Resolution No. 3 dated October 3, 1981 amending the Articles of Association was neither passed by the Board of Governors nor approved by the General Body either on that day or at any later date. The Articles of Association of 1979, therefore, were in force. For the qualification for membership as 'Promoter' of the Society, rupees one lakh had to be paid. Since no such payment was made by the persons claiming Promoter-Members, their

membership was 'void'. It was only thereafter that the appellants directly deposited the amount in the bank in the name of the Society without even informing the Society about such payment.

22. Prima facie, we are of the view that the contention of the Society is well founded that such an amount ought to have been paid by a person before he is admitted as Patron Member in the light of the phraseology used in Clause 4 (b) of the Articles of the Association. We are, however, conscious of the fact that the main matter is pending before the trial Court. We may, therefore, hasten to add that we are dealing with the contention of the appellants and the arguments of the respondents only for a limited purpose of deciding the appeal which has been filed against an interlocutory order refusing interim relief. In our opinion, it cannot be said that by not granting interim relief, the Courts below had committed an error of law or of jurisdiction.

23. As to issuance of show cause notice calling for explanation and giving an opportunity of hearing as also observance of natural justice, the learned counsel drew our attention to a decision of this Court in *T.P. Daver v. Lodge Victoria No.363, S.C. Belgaum*, ♦ 1964 (1) SCR 1 : ♦ 1963 AIR(SC) 1144. After considering various cases, the Court made the following observations;

"The following principles may be gathered from the above discussion. (1) A member of a masonic lodge is bound to abide by the rules of the lodge; and if the rules provide for expulsion, he shall be expelled only in the manner provided by the rules. (2) The lodge is bound to act strictly according to the rules, whether a particular rule is mandatory or directory falls to be decided in each case, having regard to the well settled rules of construction in that regard. (3) The jurisdiction of a civil court is rather limited; it cannot obviously sit as a court of appeal from decisions of such a body; it can set aside the order of such a body, if the said body acts without jurisdiction or does not act in good faith or acts in violation of the principles of natural justice as explained in the decisions cited supra".

24. We are afraid the ratio laid down in *Daver* does not apply to the facts of the case. In the instant case, the controversy does not relate to expulsion of a member. The question is whether the appellants can be said to have been legally admitted as Promoter-Members. Once it is held that the appellants were properly inducted and had become Promoter-Members of the Society, principles of natural justice required issuance of notice, calling for explanation and affording reasonable opportunity of being heard. The case of the Society, however, is that appellants were never legally inducted as Promoter-Members and their so called induction was not in consonance with law. The said issue is yet to be decided. In our opinion, therefore, *Daver* is of no assistance to the appellants at this stage. [See also *Board of Control for Cricket in India & Anr. v. Netaji Cricket Club & Ors.*, ♦ 6 : ♦ 6

25. The learned counsel for the appellants also relied upon *Halsbury's Laws of England*, Fourth Edition, Vol. 19(I), p 143, para 201, in which it was stated:

201. Expulsion. As a Society is founded on a written contract expressing the terms on which the members associate together, there is no inherent power to expel a member, and a member may not

therefore be expelled unless the rules provide that power. Any power of expulsion must be exercised in good faith, for the benefit of the society and strictly in accordance with the rules. If rules give the committee or some other authority power to expel a member for some act of disobedience or misconduct on his part, its decision cannot be questioned, provided the decision is arrived at after the member's defence has been heard or he has been given an opportunity of being heard. If a member is not given the opportunity the decision will be null and void. If the rules have been strictly observed, and the member has had due notice and full opportunity of answering the charges made against him and the power of expulsion has been exercised in good faith and for a reason which is not manifestly absurd, no tribunal can interfere to prevent the expulsion.

26. In view of the fact that the appellants had not been expelled or removed from Membership, in our considered opinion, the observations in Halsbury's Laws of England have no application to the case on hand.

27. The plea that the appellants were all throughout treated by the Society as Promoter-Members and they had worked for all these years which is established from various photographs, reports etc., is of no consequence. If the appellants had not been legally admitted as Patron Members, they could not be treated as such and cannot get benefit on the basis of photographs, reports, functions, etc.

28. To us, this is not a case of mutual mistake as contended by the appellants. According to the appellants, when no period is prescribed for payment of rupees one lakh, such amount can be paid at any time or in any case, within a 'reasonable period'. Prima facie, it appears to us that the amount ought to be paid before or at the time of becoming Member. Hence, even if there was a mistake, it was not a 'mutual mistake' as sought to be argued by the appellants. So-called payment was made only after the impugned resolution was passed and that too without informing the Society. It is also pertinent to note that the payment was made by the appellants on October 26, 2006 and a petition was filed in the Court under Section 23 of the Act on October 29, 2006 along with an application for the interim relief. But even in the application for interim relief, the factum of payment of amount after the resolution was passed was not disclosed by the applicants.

29. Regarding amendment of 1981, the counsel stated that Clause 4 of Articles of Association was amended by Resolution No.3, dated October 3, 1981 by the Society. The amended Clause 4 of the Articles of the Association reads thus:

4. MEMBERSHIP

The Society shall consist of the following Classes of membership.

(i)(a) PATRON

Firms, Institutions, Associations or Groups of Persons who can contribute substantially for the objectives of the Society are entitled for this membership and shall be entitled to nominate one representative on their behalf to the General Body and such person once nominated shall represent in the General Body during the tenure of the membership of such Firm, Institution, Association or Group of Persons.

(b) PROMOTER

Any person who is eminent in any walk of life and who can contribute financially or otherwise to the objectives of the Society might be chosen by the Board of Governors as 'Promoters'.

(iv) GENERAL

The name of the Chief Patron, Patrons and Promoters and Donors will be exhibited at the appropriate places of the Institutions as decided by the Board of Governors. Any change in the scale of fee or qualification of membership made in these presents shall take effect only from the date of adoption of these Articles as amended and shall not affect the status or scale of fee paid by members enrolled previously unless such members ceases to be the member of the Society for any reason whatsoever.

30. No such contention had been taken by the appellants before High Court. But even otherwise, in our opinion, the learned counsel for the respondents is right in contending that it was the case of the respondent- Society that no such amendment had been made and brought into force, which is clear from the Minutes of 118th Meeting of the Board of Governors.

31. In our opinion, no particulars, much less sufficient particulars, have been placed on record to show that the action taken by the Society was mala fide or had been taken in colourable exercise of power. A question of law which arises for the consideration of the Court is as to whether the appellants had become Promoter-Members. If the answer is in the affirmative, they are entitled to certain rights. But if the answer is in the negative, they cannot be treated as Promoter- Members. Considering the facts and documentary evidence on record, the trial Court found that no prima facie case has been made out. It, therefore, did not grant interim relief. The said order had been confirmed by the High Court. The High Court, in our opinion, rightly observed in the operative part of the order that it was a fit case to decide the main matter and accordingly a direction was issued to decide the Original Petition within three months.

32. For the foregoing reasons, in our opinion, the orders passed by the Courts below cannot be said to be illegal or unlawful. The appeals deserve to be dismissed and are accordingly dismissed. In the facts and circumstances of the case, however, there shall be no order as to costs.

33. Before parting with the matter, we may clarify that we have not entered into correctness or otherwise of the allegations and counter-allegations made by the parties and have decided the controversy on a limited issue as to legality and sustainability of the order refusing interim relief in an application filed by the appellants under Order 39, Rules 1 and 2 read with Section 151 of the Code and we may not be understood to have expressed any opinion on the merits of the matter. As and when the matters will be taken up by the trial Court for hearing, they will be decided on their own merits without being influenced by the observations made in this judgment.

34. The appeals are accordingly dismissed, however, with no order as to costs.