

RAJASTHAN HIGH COURT

Narendra Singh Rajawat Thakur

Vs.

Mohan Singh Kanota

S.B. Civil Misc. Appeal No. 183 of 2002

(Shiv Kumar Sharma, J.)

12.02.2002

JUDGMENT

Shiv Kumar Sharma, J.

1. In a civil suit challenging the election of the office-bearers of Sri Rajput Sabha, the plaintiff Thakur Mohan Singh, moved an application under Order 39 Rules 1 and 2 CPC. Learned Additional District Judge No. 1 *Jaipur* City vide order dated January 11, 2002 allowed the application in part and granted temporary injunction in the following terms :

(i) Defendants No. 2 to 22 be restrained from operating and controlling the bank accounts, properties and cash belonging to Sri Rajput Sabha without the consent and approval of Brigadier Bhawani Singh, the Permanent President of Sri Rajput Sabha till the decision of civil suit or the completion of the term of the executive whichever is earlier.

(ii) In the event of non-cooperation by the defendants No. 2 to 22 the Permanent President of Sri Rajput Sabha shall be at liberty to constitute an adhoc committee under Section 9(1) of the constitution of Sri Rajput Sabha and to conduct the fresh elections within a period of three months in the larger interest of Sri Rajput Sabha.

The plaintiff as well as the defendants No. 2 to 22 have preferred the instant Misc. appeals impugning the aforequoted order of the learned court below.

2. In the pleadings the plaintiff averred as under :-

(i) Sri Rajput Sabha is a registered Society, which was registered with the Registrar of Societies, *Rajasthan, Jaipur* at S.No. 194/1971-72 on 8.10.1971. Its

constitution was also registered with the above authority. In the year 1993, amendments were made to its Constitution and the same were passed by its General Body on 11.4.1993. Sri Rajput Sabha was constituted for the security and well being of the interests of Rajput Community of Rajasthan. The building and land presently known as Rajput Sabha by the then Maharaja of erstwhile *Jaipur* State late Sawai Man Singhji. He demised on June 24, 1970 and after him his son Brigadier Sawai Bhawani Singh was recognized as Maharaja of erstwhile *Jaipur* State and to this effect Notification dated July 12, 1970 was issued by the Hon'ble President of India under the written constitution of Sri Rajput Sabha and Maharaja Sawai Bhawani Singh has been invested with the highest position in Rajput Sabha. Under clauses 6, 8, 9 and other clauses of the written constitution of Sri Rajput Sabha he has been given the superior- most position and authority of Permanent President and it has been ordained therein that in order to safeguard the interest of Sri Rajput Sabha and its assets and property as well as the interest of Rajput Community he shall have the authority to take all suitable steps as he deems proper from time to time. In the above written constitution there is provision for Permanent President and 21 Members of Executive, which shall include One Working President, One Deputy Chairman, One General Secretary, One Organizing Secretary, one Assistant Secretary and one Treasurer. It is provided in the above written Constitution itself that the above Permanent President shall remain in authority throughout his life without any election and the other office- bearers of the Executive of Sri Rajput Sabha shall be elected from time to time in terms of the Constitution.

(ii) It is also provided in clause 6 of the constitution of Sri Rajput Sabha that the General Body of Sri Rajput Sabha shall consist of all the Members of Sri Rajput Sabha. In clause 7 there is provision for a Central Council with its representative also. In short there is a provision for different tier of units of the organizational set up of Sri Rajput Sabha. At the District level there is provision for the District Councils and the Council of Sri Rajput Sabha shall consist of representatives duly elected/nominated by the above District Units. In the year 1998 rules were also framed by Sri Rajput Sabha for the extension of organizational set up of Sri Rajput Sabha whereby provision of village units, town units, Tehsil units etc. were also made.

(iii) The plaintiff, is the Life Member and Voter of Sri Rajput Sabha and he has got right to see that the affairs of Sri Rajput Sabha are run according to its written constitution in a proper and legal manner. In the elections which were

held in the year 1995, for electing Executive and Office-bearers of Sri Rajput Sabha, the defendant No. 2 Narendra Singh Rajawat was elected as Working President. In the constitution there is provision for election of Executive and Office-bearers after every 3 years. Again elections were held after the expiry of 3 years duration on 19.4.1998 and Sri Narendra Singh Rajawat was elected as Working President of Sri Rajput Sabha, Sri Girraj Singh Lotwara, defendant. No. 4 was elected as General Secretary of Sri Rajput Sabha. Defendants 2 and 4 and others began to misuse the money in the bank account, assets and property of Sri Rajput Sabha and the then Treasurer of Sri Rajput Sabha Sri Devi Singh opposed the above persons who misused the same. The then above Treasurer Sri Devi Singh submitted report dated February 20, 2000 to the Members of the Executive of Sri Rajput Sabha and complained to them in writing that defendants 2 and 4 were not permitting him to do the functions of Treasurer, whereas under the constitution Treasurer had got the authority in all the financial matters. It was also complained that the incomes of Sri Rajput Sabha were not being deposited in bank account and there were misuses of cash money received and accountant did not obey the instructions of the then Treasurer. It was also complained that defendant No. 4 who was the then General Secretary of Sri Rajput Sabha opened personal bank account in his own individual name in ICICI Bank *Jaipur* and he deposited cash amounts which were on account of the funds of Sri Rajput Sabha. In short, the then Treasurer Sri Devi Singh sent detailed report to Maharaja Sawai Bhawani Singh, who is Permanent President of Sri Rajput Sabha, who ordered for an enquiry in the above matter through Life Member of Sri Rajput Sabha Sri Guman Singh, retd. IAS. After making proper enquiry, Sri Guman Singh came to the conclusion that there were misuses and embezzlement of the amount of Sri Rajput Sabha and he submitted his report to the Permanent President, who in exercise of his superior-most inherent and sole residuary power ordered to suspend defendant No. 2 Narendra Singh Rajawat from the post of Working President and defendant No. 4 Girraj Singh Lotwara, from the post of General Secretary by passing order dated July 1, 2000 and by the same order the Permanent President ordered them to deliver their charge to Deputy Chairman Sri Devendra Singh, however he refused to take over any charge from them.

(iv) In spite of their suspension, defendants 2 and 4 continued to discharge the functions of working President and General Secretary in utter disregard and disobedience of order dated July 1, 2000 of the Permanent President and as

such order dated July 12, 2000 had to be passed by the Permanent President to the effect that defendants 2 and 4, who have been suspended shall not call any meeting of the Executive and if inspite of that order they will discharge any functions, the same shall be treated to be utter violation of the Constitution of Sri Rajput Sabha. After the passing of the orders dated July 1, 2000 and July 12, 2000 by the Permanent President defendants 2 and 4 legally became devoid of all the powers and it was not open for them to discharge any functions of their so-called posts, however, they continued to show themselves working on the above posts and discharged various functions including the operation of the bank accounts in utter disregard and disobedience of the above orders of the Permanent President. As such the Permanent President issued letters to Banking Lokpal as well as to the Banks in which accounts and money of Sri Rajput Sabha was kept, but inspite of that defendants 2 and 4 continued to operate the bank account and they did not get closed the bank account which were opened in ICICI Bank in the name of defendant No. 4.

(v) On August 28, 2000 late Sri Guman Singh, retd. IAS who was member of Sri Rajput Sabha lodged FIR No. 270/2000 for offences under Sections 467, 468, 471 and 409 read with section 120B Indian Penal Code with Police Station Vidhayakpuri, *Jaipur*.

(vi) In short after issuing of the above orders, defendants 2 and 4 did not have any authority to show their working on their posts or to call for any meeting of the executive or to hold and proceed meetings or to record any decisions/resolutions in the minute book or to operate the bank accounts or to take any decision for further and future elections or to appoint anybody as Election Officer or to publish the voters list or to order for getting the elections of the units of Sri Rajput Sabha made or to give any information in any news paper or to declare and hold elections etc. Yet inspite of the same, defendants 2 and 4 continued to discharge all the above functions in utter disregard and disobedience of the orders of the Permanent President. Holding of elections etc. were within the domain of the functions of Organising Secretary and Sri Raghu Nath Singh Bankawat was duly working on the above post.

(vii) The plaintiff filed civil suit for perpetual injunction alongwith application for temporary injunction which was registered as Civil Misc. case No. 1/2001 and disposed of by order dated April 13, 2001 by the learned Additional Civil Judge (Junior Division) No. 5, *Jaipur* City for the relief that defendants 2 and 4 and others may be restrained from getting the elections held, however, the

learned court came to the conclusion that the illegalities which were being committed by them could be challenged after the holding of elections by way of filing election petition and with the above observation application for temporary injunction was dismissed.

(viii) The elections of the Executive and Office-bearers of Sri Rajput Sabha were got illegally and unauthorized held by defendants 2 and 4 and others on April 15, 2001 and defendants 2 to 22 were shown to have been elected therein.

3. The defendants No. 2 to 22 in the reply denied the allegations and averred that they are duly elected office-bearers and members of the Executive Committee of Sri Rajput Sabha in the election held in most democratic manner on April 15, 2001 and that the plaintiff himself took part in the election, did cast his vote and acquiesced to the election process. The defendant No. 2 after his election as Working President in the year 1995 was again elected for the next term of three years on 19.4.1998 by thumping majority. In the election held on April 15, 2001 he was again elected as Working President. The defendant No. 4 was also elected as General Secretary in the election held on April 19, 1998 and on expiry of term of three years, was again elected as General Secretary in the election held on April 15, 2001. The Executive Committee with the office-bearers and members thereof as elected on April 19, 1998 had every right, rather were under obligation under the constitution of Sri Rajput Sabha to serve Sri Rajput Sabha and the community at large for the full term of three years. It is for the Executive Committee to manage the affairs of Sri Rajput Sabha with regard to all its activities including the election of its office-bearers. The Permanent President, if there be any, has no right to sit over the wisdom of the Executive Committee, which is representative body of the member of Sri Rajput Sabha constituted for the purpose of administering and looking after the affairs of Sri Rajput Sabha. There could be no Permanent President of the Sabha after amendment of the Constitution of India. Otherwise also the Permanent President, if any, has no right to displace the duly elected office-bearers or members of the Executive Committee, who perform their functions in collective wisdom after their election in democratic manner and the executive committee is the paramount body to manage the affairs of Sri Rajput Sabha and its properties, assets etc. Under the Act of 1958 the property of the society is vested in the managing committee of the society. The defendants denied that there was any misappropriation the fund. The Executive Committee maintains books of Account in regular course and the transactions have been operated through the Bank account with authentic cash book, ledger book maintained for that purpose. There is regular audit of the income and expenditure as also of the accounts of Sri Rajput Sabha. Sri

Devi Singh was suspended from the Executive Committee for working against the interest of Sri Rajput Sabha as per the resolution of the Executive Committee dated July 13, 2000. The order dated July 1, 2000 of the so-called Permanent President suspending the defendants 2 and 4 was without authority of law. The Permanent President, if any, could not suspend the duly elected office-bearers of the executive committee against the wishes of the community and general members of Sri Rajput Sabha. The provisions of Article 9(1) of the Constitution of Sri Rajput Sabha has been wholly misread and misconstrued by the plaintiff. It does not empower the permanent President to disturb the functioning of the duly elected office-bearers of the executive committee. In fact, the permanent President is a symbolic post. Under Article 8 of the Constitution of Sri Rajput Sabha, it is the Executive Committee of Sri Rajput Sabha, which is full and complete representative body to serve, safeguard and protect the interest of all the members of Sri Rajput Sabha.

4. I have pondered over the rival submissions and scanned the constitution of Sri Rajput Sabha.

5. It is well settled that while granting temporary injunction the court cannot be regarded to deal with the suit on merits. The proceedings pertaining to grant to temporary injunctions are supplemental proceedings and the court should refrain from giving a finding on the merits of the case. A person who seeks a temporary injunction must satisfy the court as to the insistence of the following conditions :-

- (i) there is a serious question to be tried in the suit and that on the facts before the court there is a probability of his being entitled to the relief asked for by him,
- (ii) the court's interference is necessary to protect him from the species of injury which the court calls irreparable, before his legal right can be established on trial, and
- (iii) the comparative mischief or inconvenience which is likely to issue from withholding the injustice will be greater than that which is likely to arise from granting it.

The *prima facie* existence of a right and its infringement is the first condition for grant of a temporary injunction. But the applicant should besides showing existence of prima facie case further satisfy that the court's interference is necessary before his right can be established on trial by showing that irreparable injury will accrue to him if the injunction is granted. The condition about the existence of which the applicant has to satisfy the court and which is to the effect that the mischief likely to issue from

withholding of injunction will be greater than that likely to arise from granting it is called the principle of the 'balance of convenience.' In applying the principle of balance of convenience the court should weigh the amount of substantial mischief that is likely to be done to the applicant if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted.

6. In deciding whether an injunction should issue to restrain elected members from performing their duties, civil court should be guided by the balance of justice and convenience. The occasions must be few on which it will be more just and convenient to hold up the administration of newly elected bodies more or less indefinitely whilst one or more individual persons sue for a declaration that the election have been invalidly conducted.

7. On a careful scrutiny of the impugned order it appears that the learned court below has dealt with the suit on merits. Learned court below has forgotten that the proceedings pertaining to grant of temporary injunction are supplemental proceedings and it should refrain from giving a finding on the merits of the case. There was no necessity to pass such a lengthy order by incorporating unnecessary observations. Undeniably the plaintiff took part in the election and then challenged the validity of the election. Unless the election is set aside the elected representatives of Sri Rajput Sabha can not be restrained from operating and controlling the bank account, properties and cash belonging to Sri Rajput Sabha but for this purpose they have to abide by the mandate of the constitution of Sri Rajput Sabha. According to the said constitution '*Jaipur Naresh*' (Ruler of *Jaipur*) shall be the Permanent President of Sri Rajput Sabha and in order to safeguard the interest of Sri Rajput Sabha, its assets and property and in the interest of Rajput community he shall have the authority to take all suitable steps as he deems proper from time to time but in the constitution of Sri Rajput Sabha, it has no where been provided that without his consent and approval cash and the bank account of Sri Rajput Sabha cannot be operated or its properties cannot be controlled. Procedure of such control and operation has been provided in the constitution. It is rather strange and inexplicable as to how the learned trial court granted liberty to the Permanent President to constitute adhoc committee and to conduct the fresh election while deciding the interim application.

8. All the submissions that have been advanced before me by both the sides do not require consideration at this stage as they touch the very foundation of the civil suit, but I deem it necessary to examine the argument canvassed in regard to present status of '*Ruler of Jaipur*.'

9. A conjoint reading of the provisions contained in Section 87B of the Code of Civil Procedure, Article, 366 (22) and Article 363-A of the Constitution of India demonstrates that the Rulers of Indian States form a class by themselves and the special treatment given to them by section 87B Civil Procedure Code cannot be said to be based on unconstitutional discrimination. There is, of course, discrimination between the ex-Rulers and the rest of the citizens of India, but that discrimination is justified having regard to the historical and legislative background.

10. Considering the provisions contained in Section 87B of the Civil Procedure Code their Lordships of the Supreme Court in *Narottam Kishore v. U.O.I.*¹ indicated that :-

"Section 87B of the Civil Procedure Code does not contravene Article 14 and is not invalid. AIR 1962 SC 73."

"the section does not also contravene Article 19(1)(f) and is not on that account invalid.

"The legislative background of Section 87B cannot be divorced from the historical background which is to be found for instance, in Article 362. This Article provides that in the exercise of the power of Parliament or of any legislature of any State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in clause (1) of Article 291 with respect to the personal rights, privileges and dignities of a Ruler of an Indian State. This is reference to the covenants and agreements which had been entered into between the Central Government and the Indian Princes before all the Indian States were politically completely assimilated with the rest of India. The privileges conferred on the rulers of former Indian States has its origin in these agreements and covenants. One of the privileges is that of extra territoriality and exemption from civil jurisdiction except with the sanction of the Central Government. It was thought that the privilege which was claimed by foreign Rulers of Indian States prior to the independence of the country should be continued even after independence was attained and the States had become part of India, and that is how in 1951 the Civil Procedure Code was amended and the present sections 86, 87, 87A and 87B came to be enacted in the present form.

Considered in the light of this background it is difficult to see how the validity of the provisions contained in Section 87B can be successfully challenged. The Rulers of Indian States form a class by themselves and the special treatment

given to them by the impugned provisions cannot be said to be based on unconstitutional discrimination. There is, of course, discrimination between the ex-Rulers and the rest of citizens of India, but the discrimination is justified having regard to the historical and legislative backgrounds. If that be so, it would follow that the restriction imposed on the citizen's fundamental right guaranteed by Article 19(1)(f) cannot be said to be unreasonable. The restriction in question is the result of the necessity to treat the agreements entered into between the Central Government and the ex-Rulers of Indian States as valid and the desirability of giving effect to the assurances given to them during the course of negotiations between the Indian States and the Central Government prior to the merger of the States with India. It is true that the restriction works a hardship so far as the citizens are concerned, but balancing the said hardship against the other consideration, it would be difficult to sustain the argument that the section itself should be treated as unconstitutional."

11. In *Maharaj Kumar Tokendra Bir Singh v. Secretary to the Government of India, Ministry of Home Affairs and another* ² their Lordships of the Supreme Court indicated thus :-

"The definition of "Ruler" prescribed by Article 366(22) is an inclusive definition and its latter part takes in successors of a "Ruler" who satisfy the test of its first part, and so, the minor Maharaja Okendrajit Singh of Manipur who has been recognised by the President as the successor of his deceased father, must be held to be a Ruler under Article 366(22) and as such is entitled to claim the status of a Ruler of the former State of Manipur under Section 87B (2)(b)."

12. *H.H. the Maharana Sahib Bhagwat Singh Bahadur of Udaipur v. The State of Rajasthan and others* ³ was the case wherein it was observed as under :-

"As a result of the constitutional developments leading to the promulgation of the Constitution, the Ruler of Udaipur, who was at once time recognised as a sovereign of an independent State, acquired the status of a citizen of India, like other Rulers of former Indian States forming the United State of Rajasthan and his recognition as a Ruler under Article 366 (22) of the Constitution has not altered his status, but as a citizen he is undoubtedly assured of a privileged position,"

13. In *H.H. Maharajadhiraja Madhav Rao v. Jivaji Rao Scindia Bahadur and others etc.*, ⁴ it held by their Lordships of the Supreme Court that :-

"Some degree of obscurity is introduced by the use of the expression "Ruler" and "Ruler of an Indian State" in the Articles. But the meaning is reasonably plain. Ruler as defined in Article 366(22) is a former Prince, Chief or other person who was on or after January 26, 1950 recognised as a Ruler, he having signed the covenant, or his successor. The Ruler of an Indian State had sovereign authority over his State. The Ruler recognised by the President rules over no territory, and exercises no sovereignty over any subjects. He has no status of a potentate and no privileges which are normally exercised by a potentate. He is a citizen of India with certain privileges accorded to him because he or his predecessor had surrendered his territory, his powers and his sovereignty."

14. It is the duty of the members of Sri Rajput Sabha to follow religiously the mandate of the constitution of Sri Rajput Sabha. The provisions contained in the constitution of Sri Rajput Sabha cannot be interpreted so as to defeat the object for which the constitution was enacted. "*Jaipur Naresh*" is a privileged person as observed by their Lordships of the Supreme Court in the aforequoted decisions and the members of Sri Rajput Sabha are not entitled to question the status of Ex-ruler of *Jaipur*. Similarly Ex-ruler of *Jaipur* in the capacity of Permanent President of Sri Rajput Sabha cannot do any act defying the mandate of constitution of Sri Rajput Sabha. Ex-ruler of *Jaipur*, members and office-bearers of Sri Rajput Sabha are expected to cooperate each others.

15. In view of what I have discussed hereinabove, I dispose of the instant miscellaneous appeals in the following terms :

(i) The impugned order dated January 11, 2002 of the learned trial court shall stand set aside.

(ii) The learned trial court shall make endeavour to decide the civil suit as expeditiously as possible.

(iii) Till the civil suit is decided the office-bearers of Sri Rajput Sabha shall be at liberty to operate, control Bank accounts and cash belonging to Sri Rajput Sabha in accordance with the provisions contained in the constitution of Sri Rajput Sabha but they shall place the copies of income, and expenses of the preceding month of Sri Rajput Sabha on or before 10th of next month before the Permanent President of Sri Rajput Sabha as well as before the learned trial court,

(iv) There shall be no order as to costs.

Order accordingly.

Cases Referred.

1. (AIR 1964 SC 1590)
2. (AIR 1964 SC 1663)
3. (AIR 1964 SC 444)
4. AIR 1971 SC 530