Rajesh D. Darbar & Ors vs Narasingrao Krishnaji Kulkarni & Ors on 6 August, 2003

Equivalent citations: AIRONLINE 2003 SC 272

Author: Arijit Pasayat

Bench: Doraiswamy Raju, Arijit Pasayat

CASE NO.:
Appeal (civil) 5568-70 of 2003

PETITIONER:
Rajesh D. Darbar & Ors.

RESPONDENT:
Vs.

Narasingrao Krishnaji Kulkarni & Ors.

DATE OF JUDGMENT: 06/08/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:

J U D G M E N T (Arising out of SLP(C) No. 6441-6443 of 2003) WITH CONTEMPT PETITION (C) NOS. 245-247/2003 And CONTEMPT PETITION (C) Nos. 282-284/2003 ARIJIT PASAYAT,J Leave granted.

These appeals are directed against the common judgment of the High Court of Karnataka at Bangalore. The three appeals which disposed of by the judgment were preferred under Section 72(4) of the Bombay Public Trusts Act 1950 (for short the Act) wherein challenge was to the common judgment and order dated 12.11.2003 passed in Civil Miscellaneous Nos.60-62/2000 on the file of the Court of the Second Additional District Judge, Bijapur. The dispute relates to the elections claimed to have been conducted by two rival groups for the Managing Committee of the Vidya Vardhak Sangh, Bijapur, which is a society registered under the Societies Registration Act, 1860 (in short the 'Societies Act'). It is also a registered body under the provisions of the Act. The dispute arose because names of 38 persons were included in the electoral rolls for the election. While the appellants claim that the 38 persons whose names are included in the electoral roll were not eligible to participate in the process of election, the other group, that is, respondents 1 to 12 contested the claim. Initially after the election, the elected Committee started functioning in October 1996, as the

date of election was 6.10.1996. There is no dispute that subsequent committees have been elected as the term of office is 3 years. But the basic dispute about the eligibility of the 38 persons still continues to haunt the Society. We need not go into the various disputes both factual and legal in detail. Two points have been urged by learned counsel for the appellants. They pointed out that the High Court lost sight of the fact that by passage of time the dispute as regards the validity of the election in October 1996 became non est. Secondly, the High Court erroneously came to the conclusion that the 38 persons were legally inducted as members. Such conclusion was arrived at by proceeding on erroneous premises. The High Court committed a faux pas by holding that the application filed by the respondents 1 to 12 for adducing additional evidence was not dealt with by the Charity Commissioner thereby prejudicing case of the respondents. It was pointed out by the appellant that the application was not pressed by the applicants and it is not as if the Charity Commissioner had not dealt with the application in the proper perspective.

Per contra, the learned counsel for the respondents 1 to 12 submitted that the dispute did not become infructuous by passage of time as these basic issues regarding eligibility remained. Further, the materials relied upon by the High Court to conclude that 38 persons were legally inducted as members cannot be faulted because of the materials considered by the High Court.

The impact of subsequent happenings may now be spelt out. First, its bearing on the right of action, second, on the nature of the relief and third, on its importance to create or destroy substantive rights. Where the nature of the relief, as originally sought, has become obsolete or unserviceable or a new form of relief will be more efficacious on account of developments subsequent to the suit or even during the appellate stage, it is but fair that the relief is moulded, varied or reshaped in the light of updated facts. Patterson Vs. State of Alabama [(1934) 294 U.S.600, 607], illustrates this position. It is important that the party claiming the relief or change of relief must have the same right from which either the first or the modified remedy may flow. Subsequent events in the course of the case cannot be constitutive of substantive rights enforceable in that very litigation except in a narrow category (later spelt out) but may influence the equitable jurisdiction to mould reliefs. Conversely, where rights have already vested in a party, they cannot be nullified or negated by subsequent events save where there is a change in the law and it is made applicable at any stage. Lachmeshwar Prasad vs. Keshwar Lal (1940 FCR 84 = AIR 1941 FC 5) falls in this category. Courts of justice may, when the compelling equities of a case oblige them, shape reliefs – cannot deny rights – to make them justly relevant in the updated circumstances. Where the relief is discretionary, Courts may exercise this jurisdiction to avoid injustice. Likewise, where the right to the remedy depends, under the statute itself, on the presence or absence of certain basic facts at the time the relief is to be ultimately granted, the Court, even in appeal, can take note of such supervening facts with fundamental impact. This Court's judgment in P. Venkateswarlu v. The Motor & General Traders (AIR 1975 SC 1409) read in its statutory setting, falls in this category. Where a cause of action is deficient but later events have made up the deficiency, the Court may, in order to avoid multiplicity of the litigation, permit amendment and continue the proceeding, provided no prejudice is caused to the other side. All these are done only in exceptional situations and just cannot be done if the statute, on which the legal proceeding is based, inhibits, by its scheme or otherwise, such change in cause of action or relief. The primary concern of the Court is to implement the justice of the legislation. Rights vested by virtue of statute cannot be divested by this

equitable doctrine (See V.P.R.V. Chokalingam Chetty vs. Seethai Ache and Ors.(AIR 1927 PC

252).

The law stated in Ramji Lal Vs. State of Punjab, [ILR (1966) 2 Punj 125]=(AIR 1966 Punj; 374 (F.B) is sound:

> "Courts do very often take notice of events that happen subsequent to the filing of suits and at times even those that have occurred during the appellate stage and permit pleadings to be amended for including a prayer for relief on the basis of such events but this is ordinarily done to avoid multiplicity of the proceedings or when the original relief claimed has, by reason of change in the circumstances, become inappropriate and not when the plaintiff's suit would be wholly displaced by the proposed amendment (see Steward Vs The North Metropolitan Tramways Company (1885) 16 QBD
>
> 178) and a fresh suit by him would be so barred by limitation."

These aspects were highlighted by this Court in Rameshwar and Ors. vs. Jot Ram and Ors. (AIR 1976 SC 49). The courts can take notice of the subsequent events and can mould the relief accordingly. But there is a rider to these well established principles. This can be done only in exceptional circumstances, some of which have been highlighted above. This equitable principle cannot, however, stand on the way of the court adjudicating the rights already vested by a statute. This well settled position need not detain us, when the second point urged by the appellants is focussed. There can be no quarrel with the proposition as noted by the High Court that a party cannot be made to suffer on account of an act of the Court. There is a well recognised maxim of equity, namely, actus curiae neminem gravabit which means an act of the Court shall prejudice no man. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other maxim is, lex non cogit ad impossibilia, i.e. the law does not compel a man to do that what he cannot possibly perform. The applicability of the abovesaid maxims has been approved by this Court in Raj Kumar Dey and Ors. vs. Tarapada Dey and Ors. (1987 (4) SCC

398), Gursharan Singh vs. New Delhi Municipal Committees (1996 (2) SCC 459) and Mohammed Gazi vs. State of M.P. and Ors. (2000(4) SCC 342).

On facts where the High court has slipped into error is by observing that the Charity Commissioner committed mistake by ignoring the documents which the respondents 1 to 12 wanted to produce and for which purpose an application was filed. The High Court observed that though necessary application to file additional evidence was filed before the Charity Commissioner, unfortunately the Charity Commissioner did not pass any order on that application and this lapse of the Charity Commissioner would result injustice to the parties. Undisputedly, the aforesaid application was not pressed before the Charity Commissioner. That being the position, the question of the Charity Commissioner passing any order on that application did not arise. The High Court has relied upon

the documents which the respondents 1 to 12 wanted to produce as additional evidence before the Charity Commissioner. It was not as if the Charity Commissioner had ignored these documents by not passing any order on the application filed. On the contrary as noted above, the application itself was not pressed. On this score alone, judgment of the High Court is indefensible. Several courses are open in view of the aforesaid finding. But we feel it would be appropriate, taking note of the passage of time and the nature of the dispute revolving around the question whether 38 persons were rightly included in the electoral rolls, if the matter is heard by the prescribed Appellate Authority. It is submitted by learned counsel for the parties that by the Hindu Religious Institutions and Charitable Endowments Act 1997, Karnataka Act No.33 of 2001 (hereinafter referred as Endowments Act), the Bombay Public Trusts Act 1950 has been repealed.

As the basic issue revolves around as noted supra on the question of the legality of their membership and the eligibility of 38 persons to participate in the election held in the year 1996, let the election be held for the Committee under the directions and supervision of the Appellate Authority provided under the Endowments Act. Before issuing directions for holding election, the said authority shall decide about the eligibility of the 38 persons by deciding whether the names of the concerned 38 persons were rightly included in the electoral rolls prepared by the respondents 1 to 12 for election of members to the Committee which was held on 6.10.1996. Parties shall be permitted to place all such materials on which they place reliance to justify their respective claims and stands. We make it clear we have not expressed any opinion on the said question. The appeals are disposed of accordingly leaving the parties to bear their respective costs. Contempt Petition (C)Nos. 245-247/2003 and 282-284/2003 No orders are necessary to be passed in these petitions in view of our judgment delivered today in SLP(C) Nos. 6441-6443/2003.