

Mahadeo Prasad And Ors. vs Kamala Varma And Ors. on 19 August, 1955

Equivalent citations: AIR1956ALL51, AIR 1956 ALLAHABAD 51

JUDGMENT

James, J.

1. These applications for setting aside an arbitration award have arisen in circumstances which require to be described in some detail.

2. The Kayastha Pathshala, Prayag (Allahabad), is an old charitable and educational institution registered under Act 21 of 1860, and its affairs are governed by its registered Rules entitled "The Rules of the Governing Council of Trustees" (hereinafter referred to as the Rules). All properties held by and in the name of the Kayastha Pathshala" vest in the Governing Council, According to the Rules, ten classes of persons belonging to the, Kayastha Community are eligible for membership of the Council. The most important of these for described in Clause (1) of Rule 7 of the Rules and may for the sake of convenience be termed "donor -- trustees, and conditions have been laid down which a person must fulfil before he can be enrolled as a donor -- trustee.

The Governing Council is headed by a President who is invested with wide powers in managing the affairs of the Kayastha Pathshala and its properties. He must be a donor-trustee ordinarily residing at Allahabad and must be a person of ability, good reputation and substance. He is elected from among the members of the Governing Council and holds office for a term of five years beginning from the 1st of January. He carries on the administration with the assistance of an Executive Council, consisting of a Vice-President, a Secretary and at least seven, members drawn from the Governing Council, all of whom he appoints.

The President around whom the present litigation revolves was due to be elected at the end of Dec. 1944 and was to commence his duties on 1-1-1945. Interested parties with the object of ensuring the success of theirs respective candidates, were making efforts to enrol a large number of new donor-trustees. There were several candidates in the presidential field and their nomination papers were duly filed. One of them was Rai Saheb, Dr. Piare Lal Srivastava. After scrutiny the Returning Officer rejected his nomination paper, whereupon his supporters adopted one Mr. Piare Mohan as their candidate.

Ultimately the election was fought out between Mr. Piare Mohan and Dr. Narayan Prasad Asthana. The actual election was held on 25-12-1944 and Mr. Piare Mohan was declared the successful candidate, and he entered upon his new duties as President on 1-1-1945. Shortly afterwards certain gentlemen prominent in the affairs of the Kayastha Pathshala fell out amongst themselves, and that

was the starting point of litigation. Curiously enough, although Mr. Piare Mohan had been the candidate of Dr. Piare Lal Srivastava's party, the dispute resolved itself into efforts to oust Mr. Piare Mohan from the office of President and replace him by Dr. Piare Lal Srivastava.

3. Now, under Rule 7 (1) of the Rules, a member of the Kayastha community can become a donor-trustee by paying Rs. 100/- or upwards in cash or through property yielding a given minimum income, while Rules 10 and 11 prescribe the procedure for admitting such a person as a member of the Governing Council. By virtue of Rule 9 a person is entitled to one vote for. donating the first Rs. 100/- but only to one additional vote for every additional donation of Rs. 2,500/- subject to a maximum of ten votes. It is, therefore, obvious that the interest of every party anxious for the support of the maximum number of voter lies in having on its side as large a number of donor-trustees for Rs. 100/- each as possible rather than in a smaller number of such persons paying much bigger amounts as donation.

Prior to the presidential election of December, 1944 certain persons gave to the then President separate letters along with large donations and a list of persons in each case the donation consisting of one hundred times the number of persons named in the list asking for these persons to be enrolled forthwith as donor-trustees so as to entitle them to vote at the ensuing election. In each case the request was granted through resolutions passed by the Executive Council, and the persons concerned were duly enrolled as donor-trustees. All persons thus admitted were able to vote at the election held on 25-12-1944.

4. After difference had arisen between prominent members of the Kayastha community subsequent to the election of Mr. Piare Mohan a number of old trustees professing to be interested in the welfare of the Kayastha Pathshala on 22-6-1943 instituted suit No. 41 of 1945 in the court of the Civil Judge, Allahabad, against 275 persons. In their plaint they alleged that Dr. Piare Lal Srivastava and his adherents Thakur Shiva Nath Singh and Thakur Vishwanath Singh either directly or through their close relatives had got the defendants 1 to 232 enrolled illegally by personal payment of large cash donations and contrary to the Rules, and further that another adherent, B. Basdeo Narain, had got the defendants 233 to 273 enrolled through the unauthorised gift of a defective hosiery factory.

The Governing Council through its then President, Mr. Piare Mohan, was arrayed as defendant 274, and the President of a Subsidiary trust of the Pathashala as defendant 275, these two defendants being pro-forma only. The reliefs asked for against the first 273 defendants were:--

(a) That it be declared that the resolutions of the Executive Council admitting the defendants 1 to 232 as members of the Governing Council were null and void and these defendants were not entitled to any rights as members of the Council;

(b) that it be declared that the resolutions of the Executive Council enrolling the defendants 233 to 273 as donor-trustees were null and void and these defendants were not entitled to exercise any rights as members of the Governing Council; and

(c) that these 273 defendants be permanently restrained from exercising any rights as members of the Governing Council. No relief was sought against the Governing Council, the defendant 274, or the subsidiary trust, the defendant 275, nor did either of them file any written statement.

5. Several of the principal defendants did not enter appearance, but others contested the suit on a variety of grounds, their most important plea being that the enrolment of the various donor-trustees was valid and in full conformity both with the Rules and the prevailing practice.

6. A short time previously Dr. Piare Lal Sri-vastava had brought suit No. 29 of 1945 before the Civil Judge praying for a declaration that his nomination paper had been wrongly rejected by the Returning Officer and asking that Mr. Piare Mohan's election as President be set aside and a fresh election allowed to take place. Some other persons filed suit No. 47 of 1945 in the same court against Mr. Piare Mohan alone for declaring his election invalid.

7. The institution of these court proceedings perturbed many responsible members of the community, who considered that instead of an unseemly wrangle in public the difference between the parties could be better composed and harmony restored if their disputes were referred to the arbitration of persons of acknowledged impartiality and high character. After the three suits had proceeded in the Civil Judge's court for some time wiser counsels prevailed and a majority of the contestants agreed to refer the suits to the arbitration of three outstanding members of the Kayastha community, namely. Dr. Sachchidanand Sinha, Mr. Mahabir Prasad and Dr. Rajendra Prasad (now President of India).

Mr. Piare Mohan set the ball rolling by making a written application to the court on 18-1-1946 requesting that the matter be referred to the arbitration of these three gentlemen, and shortly afterwards on 8-2-1946, the plaintiffs and a vast majority of the defendants of suit No. 41 of 1945 made a written application to the Court in these terms:

"The case should be referred to Dr. Sachchidanand Sinha, B. Mahabir Prasad Sahib and Dr. Rajendra Prasad, umpire, for arbitration. The arbitrators shall be authorised to decide the case after taking evidence or considering over the evidence already adduced in case No. 29 of 1945 and after taking oral and documentary evidence which they think proper or making private or public inquiry as they may consider fit. The award made by them shall be accepted and admitted by the parties. It shall not be necessary for Dr. Rajendra Prasad, umpire, to attend every meeting of the 'pan-chayat'. It will depend upon his sweet will.

The opinion of the majority shall prevail The remaining defendants who have not joined this statement shall be authorised to join the arbitration as a party during the course of the arbitration, otherwise proceedings shall be taken against them under Section 24 of the Arbitration Act".

The three suits were in consequence referred to the three named arbitrators by the Civil Judge. The arbitrators signed their award on 18-11-1946. They dismissed Dr. Piare Lal Srivastava's suit No 29 of 1945. They decreed suit No. 47 of 1945 against Mr. Piare Mohan and declared the latter's rival Dr. Asthana as the duly elected President. In suit No. 41 of 1945 the operative part of their award ran as follows:

"The plaintiffs are entitled to the reliefs sought by them in the prayer portion of the plaint.

We further award and declare that the contesting defendants before us are not entitled to exercise any of the rights and privileges of a member of the Governing Council of the Kayastha Pathshala and they should be permanently enjoined from exercising any such right, and we further award (a) that the amounts paid by Rai Saheb, Dr. Piare Lal Sri-vastava, or his wife, purporting to have been made on behalf of such defendants as are before us, were their (that is, Dr. Srivastava's and his wife's) personal donations and they should be treated as donors of those amounts.

The said donors (Dr. and Mrs. Piare Lal Sri-vastava) be declared by the proper authority of the Pathshala to be entitled to as many votes as may be admissible to each of them under Rule 9 of the Registered Rules of the Kayastha Pathshala on the amount donated by each of them, (b) similarly, the sums paid by Thakur Shiva Nath Singh or his mother (Bhagwati Kuer), purporting to have been made on behalf of such defendants as are before us, were their (that is, Thakur Shiv Nath Singh's or his mother's) donations, and they should be treated as donors of those amounts.

They shall be declared as donors, by the proper authority of the Pathshala, to be entitled to as many votes as may be admissible to each of them, under Rule 9 of the Registered Rules of the Kayastha Pathshala and "(c) similarly, Tirth Kuer or Rama Shanker were to be treated as donors of the sums sent by Thakur Bishvvanath Singh, purporting to have been sent on behalf of such of the defendants as are before us, and each of them (that is, Tirth Kuer or Rama Shanker) should be declared by the proper authority of the Pathshala to be entitled to as many votes as may be admissible under Rule 9 of the Registered Rules of the Kayastha Pathshala, on the amount donated by each of them".

(The award was silent regarding B. Basdeo Narain's hosiery factory as apparently he had not joined in the arbitration agreement).

8. The awards were filed in the Civil Judge's court on 18-12-1946. On their receipt the Civil Judge gave notice to the parties and allowed them thirty days' time for filing objections if any. He pronounced judgment in accordance with the awards in suits Nos. 29 and 47 of 1945 except that in the latter suit he disregarded the clause relating to Dr. Asthana's election as President. In suit No. 41 of 1945 a number of objections were filed against the award, though it is important to note that no objection was preferred on behalf of the Governing Council, the defendant 274.

Before any decision could be recorded by the learned Civil Judge the suit was transferred to the High Court under its Extra-ordinary Civil Jurisdiction and was registered as Original Suit No. 6 of 1948. It is now before me for final disposal.

9. Mention should here be made of a significant development. On 29-10-1947 application No, 155/C accompanied by an affidavit was made to the Civil Judge on behalf of the defendant 274 praying that that defendant (which was, as previously stated, the Governing Council through its President Mr. Piare Mohan) be substituted by "the Governing Council, Kayastha Pathshala, Prayag, through Dr. P. L. Srivastava". The affidavit declared that by a resolution passed on 31-8-1947 the Governing Council had appointed Dr. Piare Lal Srivastava to represent it in the suit.

The learned Civil Judge on the 15th November 1947 granted the request and further allowed the defendant No. 274 in its new style to file a written statement (I might here state that application No. 155/C and its accompanying affidavit are missing from the record. The facts stated in this paragraph have been taken by me from the Civil Judges order dated 15-11-1947).

10. The present position with regard to the defendants is as follows. Eight of them, Nos. 22, 33, 89, 173, 184, 189, 209 and 220 are dead and the claim against them has abated. The names of five of them, Nos. 264 to 268, have been duplicated in the list of defendants given in the plaint at Nos. 269 to 273, and accordingly by an order of this Court dated 20-4-1953 the names of Nos. 269 to 273 have been deleted. Forty two defendants did not join in the application for reference to arbitration.

They were Nos. 10, 19, 37, 38, 40, 42, 46, 50, 52, 62, 72, 73, 82, 86, 90, 97, 99, 104, 122, 128, 138, 143, 144, 147, 149, 157, 167, 168, 170, 172, 175, 177, 212, 213, 215, 222, 226, 233, 235, 245, 268 and 275. This Court on 20-4-1953 allowed the plaintiff to withdraw the suit against these forty-two defendants, but without permission to institute a fresh suit. This leaves us with 220 defendants including the defendants 274 in its new form, namely, the Governing Council through Dr. Piare Lal Srivastava.

11. Though a large proportion of these 220 defendants had filed objections to the award, only three of them have appeared before me to continue the contest. These are the defendant 1, Mrs. Kamla Verina, (sister of Dr. Piare Lal Srivastava) the defendant 103, Prabhash Kumar Srivastava (son of Dr. Piare Lal Srivastava) and the defendant 274 in its new style. It is, therefore, of the utmost significance to note that no less than 217 of the defendants have submitted to the award. The case set up by the defendants 1 and 103 is different from that of the defendant 274, and the two cases require to be dealt with separately.

12. Briefly, the charge which the defendants 1 and 103 level against the arbitrators is that of judicial misconduct. They allege first of all that the arbitrators had no jurisdiction to adjudicate upon the right of Dr. and Mrs. Piare Lal Srivastava, Srimati Bhagwati Kuer, Thakur Shiva Nath Singh, Srimati Tirath Kuer and Mr. Rama Shanker since these individuals were not parties to the suit and it is further alleged that for the same reason the arbitrators acted wrongly in directing the proper authority of the Kayastha Pathshala to allow certain votes to these persons.

In other words, the objection relates to those parts of the award which are marked (a) (b) and (c) in the quotation from the operative part of the award I have given in the foregoing (para. 7). Regarding this objection I may state at once that it is well-founded, for the persons named therein were not parties to the suit, nor were the arbitrators called upon to give any decision on the question as to how donations made by them were to be treated. But Section 15(a), Arbitration Act gives the Court authority to modify or correct an award "where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred.

I am firmly of opinion that this provision of the law is fully applicable to the award before me. The arbitrators were only required to decide whether the first 273 defendants had been validly enrolled as donor-trustees and whether they should be restrained by injunction from exercising rights as members of the Governing Council. These points at issue were fully covered by the following passage in the operative part of the award:

"The plaintiffs are entitled to the reliefs sought by them in the prayer portion of the plaint. We further award and declare that the contesting defendants before us are not entitled to exercise any of the rights and privileges of a member of the Governing Council of the Kayastha Pathshala, and they should be permanently enjoined from exercising any such right".

The part of the award which follows this passage was redundant and unnecessary. That part, it is perfectly clear, deals with matters not referred to arbitration, for in deciding what relief the plaintiffs were entitled to it was not necessary to examine whether the moneys paid by Dr. Srivastava and others were personal donations or whether these persons should be treated as donors of those amounts or how many votes they should be allowed to hold.

Also, the latter part of the award can be distinctly separated from the former part and does not in the slightest affect the decision on the matters referred. This Court is therefore fully justified under Section 15(a) in modifying the impugned award by cancelling its second part.

13. It is next contended on behalf of the objectors that all the parties to the suit had not agreed to refer the disputed points to arbitration. I have already mentioned that fortytwo defendants did not join in the arbitration agreement and that they were removed from the array of defendants. This being so the objection loses all its force. Besides, Section 24, Arbitration Act allows only some of the parties to a suit to apply for arbitration provided that the matter in difference can be separated from the rest of the subject-matter of the suit.

The right of membership of the Governing Council is an individual and personal right and is quite independent of the rights of others. The rights of the non-refraining defendants were therefore distinct and separate from the rights of those who agreed to join in the reference, for in the suit the Court was called upon to decide the competence of individual defendants to remain members of the Governing Council. It clearly follows that it was perfectly valid to refer the case of only some of the defendants to arbitration.

It should also be noted that the latter part of Sec 24 permits the suit to continue so far as it re-lates to the parties who do not join in the arbitration agreement, and the award when made binds; only those of the parties who had joined. In fact, the suit against the fortytwo defendants who had not joined did continue after the award, and it was only at a subsequent date that it was withdrawn with the permission of this Court. No legitimate exception can therefore be taken on the present ground to the validity of the award.

14. The next argument of the objectors refers to a resolution of the Executive Council dated 18-6-1944 by which a number of defendants including the defendant 1 were enrolled as members o the Governing Council. The argument advanced is that the plaintiffs' have not sought the setting aside of the resolution of 18-6-1944 consequently those of the defendants who are covered by it must continue to remain lawfully admitted members. The argument is misconceived.

The relief prayed for in the suit was that these defendants be declared as not entitled to exercise any rights as members of the Governing Council and be restrained from exercising such rights. This relief the award granted. The fact that enrolment was under a certain resolution of the Executive Council was merely an incidental circumstance and was irrelevant to a decision of the point at issue; when an object is attained through taking a number of steps and it is sought to attack that object it is necessary to launch a simultaneous attack against the steps also.

If the Court holds that a certain person is not a validly appointed member of the Council and res-trains him by injunction from exercising rights as a member, no amount of resolutions on the minute books can detract from the force of the Court's order.

15. Again it is urged that the arbitrators did not allow some of the defendants to produce evidence in support of their case and did not consider the individual case of each defendant. The contention is untenable. In an earlier part of this judgment I have given a long quotation from the application of the parties to refer the matter in difference to arbitration. In it they had unequivocally given the arbitrators discretion to take or not to take evidence, and had even authorised them to decide the matter by making a private enquiry if they so chose.

Hence, even if I were to assume for the sake of argument that evidence was shut out, the arbitrators under their terms of reference had a perfect right to do so. As regards the complaint, relating to the non-examination of individual cases, it is sufficient to observe that the arbitrators first examined the principles on which they should base their decision, and having arrived at these principles found no difficulty in giving their award against the whole body of defendants appearing before them. Failure to consider individual cases cannot affect their award as it was neither required nor was necessary.

Indeed, the arbitration agreement, behind which the parties cannot be allowed to go, never contemplated, either expressly or by necessary implication, the examination of individual cases.

16. Finally it is objected that the arbitrators took an erroneous view of the law when they held that the enrolment of the defendants as donor-trustees was in contravention of the Rules, The short answer to this objection is that a wrong view of the law cannot make an award invalid.

17. For these reasons I have no hesitation in reflecting the objections to the award advanced by the defendants 1 and 103.

18. I turn now to consider the case of the defendant 274, the Governing Council through Dr. Piare Lal Srivastava. I have previously mentioned that in the plaint the Governing Council through its President Mr. Piare Mohan had been made a pro forma defendant, that no relief was sought against it and that it did not file any written statement. I have also stated that the learned Civil Judge on 15-11-1947 allowed Mr. Piare Mohan to be substituted by Dr. Piare Lal Srivastava and further permitted a written statement to be filed by the new styled defendant.

I would, however, like to emphasise that no objection to the arbitration award was filed by the Governing Council either when it was sued through Mr. Piare Mohan or after his substitution by Dr. Piare Lal Srivastava. In other words, although Article 158, Limitation Act prescribes a period of thirty days from the date of service of notice for making an application to get an award set aside, no such application has been made yet although more than eight years have elapsed.

19. The learned counsel for the defendant 274 in its new form asks for the award to be set aside on the ground that the Governing Council was not a party to the arbitration agreement. Factually this is not true, for there is on the record an application dated 18-1-1946 signed by Mr. Piare Mohan agreeing for all the three suits to be referred to the arbitration of Dr. Sachchida Nand Sinha, Mr. Mahabir Prasad and Dr. Rajendra Prasad, and it is important to note that in this application he has described himself as "President, Kayastha Pathshala, Allahabad".

This application immediately exposes the weakness of the learned counsel's argument. No doubt Mr. Piare Mohan did not sign the application of 8-2-1946 which was signed by the plaintiffs and a vast majority of the defendants. Nevertheless there is nothing in the Arbitration Act which compels the parties to subscribe to one and the same application and indeed there is no objection to more than one application provided they all agree on the object and method of the arbitration proceedings.

Rule 41 of the Rules prescribes that the Governing Council may sue and be sued under the name and style of the Kayastha Pathshala through the President for the time being, while Rule 39 (c) makes the decision of the Returning Officer on all matters relating to election final. Mr. Piare Mohan was the duly elected President during the relevant period. As such he had exclusive authority to decide on the stand the Governing Council ought to take in the litigation which had started.

Consequently he was fully competent both to omit to file a written statement in the suit and to make the application dated 18-1-1946 to refer the dispute to arbitration. Merely because of a much later date he was replaced by another person does not make his actions invalid. There is therefore no force in the contention that the Governing Council did not join in the arbitration agreement.

20. There is another obstacle in the way of the defendant 274 in its new form. This is that, as already emphasised, there is no application by challenging the validity of the award, whereas the provisions of the Arbitration Act make it abundantly clear that such a challenge is inadmissible without an application. The learned counsel for the defendant has argued that the written statement which the

latter was allowed to file by the Civil Judge's order of 15-11-1947, and did file on 12-12-1947 may be taken as an application for setting aside the award. A perusal of this document shows that it is a reply by this defendant to the recital in the plaint; there is however one paragraph in it, paragraph 24, which runs:--

"The contesting defendant was not a party to the reference to arbitration and in any case Mr. Piare Mohan did not represent it properly and as such the award of the arbitrators is null and void and is not binding".

Even if I were to place this defence case at the highest and interpret this written statement as an application for setting aside the award, it cannot be of much avail to the Governing Council, since I have already shown that it was distinctly fit party to the arbitration agreement and that Mr. Piare Mohan fully and properly represented it during the arbitration proceedings.

Moreover, any objection seeking the setting aside of an award must under Article 158, Limitation Act be made within thirty days of the date of service of notice, whereas it is acknowledged that the written statement relied on by the objector's learned counsel was filed a long period afterwards. Here I feel bound to remark that the learned Civil Judge fell into a grievous error in allowing a written statement to be filed by the Governing Council at the stage that he did.

The validity of the award was at that time in dispute before him and he could not have allowed the filing of a written statement until after he had given his decision on the validity of the award and rejected the latter at least in so far as the Governing Council was concerned.

21. Another plea of the new defendant 274 is that its interest is inseparable from that of the other defendants and that if the award is confirmed it would get involved in unnecessary litigation since other defendants may sue it for refund of their donations. This is another argument which I find misconceived. The Governing Council is interested only in validly enrolled members, consequently if some of the defendants are declared in-validly enrolled donor-trustees it should not occasion it any concern; on the contrary it should welcome the ejection of persons who have secured membership unlawfully.

As regards the plea of unnecessary litigation, it is sufficient for me to observe that such a plea finds no place in the grounds given in Section 30, Arbitration Act for cancelling an award. Besides, if donations have in fact been accepted unlawfully, the Governing Council should of its own accord refund them, in which case the litigation of which it seems so nervous will not take place.

22. In these circumstances I reject the various objections advanced on behalf of the newly styled defendant 274 and hold that the Governing Council was a party to the arbitration proceedings and must therefore be bound by the award. I might add however that this finding cannot affect the result of the suit since the plaintiffs do not ask for any relief against this defendant.

23. In the result I confirm the first part of the arbitration award, namely, the part which is in the following terms:--

"The plaintiffs are entitled to the reliefs sought in the prayer portion of their plaint.

We further award and declare that the con-testing defendants before us are not entitled to exercise any of the rights and privileges of a member of the Governing Council of the Kayastha Pathshala and they should be permanently injuncted from exercising any such right".

I pronounce judgment accordingly against the defendants who are still on the record except the defendant 274 (against whom no relief is sought). The judgment is 'ex parte' against the defendants barring defts. 1 & 103 & 274. The plaintiffs shall be entitled to recover their costs from the defendants 1 & 103 who have contested the suit until the very end. Defendant 274 shall bear its own costs. A decree shall be prepared in these terms.