

GAHC010036222023



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/564/2023

INDIA CLUB, GUWAHATI AND 4 ORS.
REPRESENTED BY ITS GENERAL SECRETARY,
GNB ROAD, NEAR RESERVE BANK OF INDIA, GUWAHATI, PO GUWAHATI
GPO, PS PALTAN BAZAR, GUWAHATI-781001, DIST KAMRUP M ASSAM

2: THE GENERAL SECRETARY
INDIA CLUB
GUWAHATI
GNB ROAD
NEAR RESERVE BANK OF INDIA
GUWAHATI
PO GUWAHATI GPO
PS PALTAN BAZAR
DIST KAMRUP M ASSAM

3: DR. ASHIM CHOUDHURY

S/O LATE DHARANIDHAR CHOUDHURY

GNB ROAD
AMBARI
OPP. BURA JAMA MASJID GUWAHATI
781001
DIST KAMRUP M ASSAM

4: THE CLUB COMMITTEE
REPRESENTED BY ITS PRESIDENT
INDIA CLUB
GUWAHATI
GNB ROAD
NEAR RESERVE BANK OF INDIA
GUWAHATI
PO GUWAHATI GPO
PS PALTAN BAZAR

DIST KAMRUP M ASSAM

5: THE GENERAL COUNCIL
INDIA CLUB
GUWAHATI
REPRESENTED BY ITS GENERAL SECRETARY
INDIA CLUB
GUWAHATI
GNB ROAD
NEAR RESERVE BANK OF INDIA
GUWAHATI
PO GUWAHATI GPO
PS PALTAN BAZAR
DIST KAMRUP M ASSA

VERSUS

BINOD DAS
S/O LATE CHAKRADHAR DAS, RESIDENT OF HOUSE NO. 54, R.G BARUAH
ROAD, GUWAHATI 781005, DIST KAMRUP M ASSAM

Advocate for the Petitioner : MR. N BHARALI,

Advocate for the Respondent : MR. D MOZUMDER,

Linked Case : FAO/51/2022

BINOD DAS
S/O LATE CHAKRADHARA DAS

RESIDENT OF HOUSE NO. 54
R.G BARUAH ROAD
GUWAHATI 781005
DIST KAMRUP M ASSAM

VERSUS

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Advocate for : MR. D MOZUMDER
Advocate for : S ALI (r-3) appearing for INDIA CLUB
GUWAHATI AND 4 ORS.

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 20.12.2024

Heard Mr. M.K. Choudhury, learned Senior Counsel assisted by Mr. P. Bharadwaj, learned counsel for the applicants in I.A.(Civil) No. 564/2023 and respondent in FAO No.51/2022. And also heard Mr. S. Biswas, learned counsel for the opposite party in I.A.(Civil) No. 564/2023 and appellant in FAO No. 51/2022.

2. As agreed upon by learned Advocates of both sides, it is proposed to dispose of the present I.A.(Civil) No. 564/2023 and also the FAO No.51/2022, by this common order.

3. It is to be noted here that I.A. (Civil) No. 564/2023, under Order 39 Rule 4 read with Section 151 of the Code of Civil Procedure, is preferred by the applicants for setting aside/vacating/discharging the ex-parte order of ad-interim temporary injunction dated 23.09.2022 passed by this Court in I.A.(Civil) No.2961/2022, arising out of FAO No.51/2022, and the said FAO No.51/2022 was filed by the opposite party/appellant challenging the order dated 21.09.2022, by which the learned trial court has issued notice to the opposite party, the respondent herein, in the interlocutory application No. 5815/22, filed by the appellant in Title Suit No. 569/22.

4. The background facts leading to filing of the interlocutory application being I.A.(Civil) No.2961/2022, and the FAO No. 51/2022, is briefly stated as under:-

"The applicant No.1 is a reputed club of Guwahati, which is registered as society under the Societies Registration Act, 1860, with Registration No.RS/647 of 1982-83 and the opposite party/appellant is a member of the aforesaid club. The applicant No.1/respondent No.1, hereinafter referred to as the India Club, is a club having 8 classes of members enrolled therein and all the affairs and activities of the Club is being governed by its own Constitution and Rules, framed and adopted by the aforesaid society. In the month of May, 2022, 85th Annual General Meeting of the India Club was notified to be held on 26.06.2022 and one Dr. Ashim Choudhury, a life member was appointed as the Returning Officer to conduct the election of office bearers and Club Committee members of the Club. Thereafter, the Returning Officer had issued an Election Circular, dated 13.05.2022, inviting nominations from the interested permanent members of the Club for election of the office bearers. Accordingly, the opposite party/appellant, namely, Shri Binod Das had filed his nomination for the post of Joint Secretary of the Club enclosing photocopy of mark sheet of TDC Final year. Thereafter, the Returning Officer had directed him to file his original mark sheet of B.Com 1st and 2nd year examination as well as pass certificate issued by Gauhati University in his name, as in view of the Constitution of the Club, the Joint Secretary should have a graduate degree. Thereafter, on 31.05.2022, at about 12/12:30 p.m., Shri Binod Das, entered into the office room of the Club and taking advantage of absence of the Returning Officer, the respondent No.3, he had pulled out his nomination paper and the documents annexed therewith from the file lying in the table of the Club Manager, namely, Mr. Enoj Yadav and thereafter, tore apart of his nomination paper and documents and took

away the same with him and on being violated the code of conduct of the members, on 31.05.2022, the members of the India Club Committee decided to make an in-house inquiry as per Article 10 of the Constitution and Rules and thereafter, show-cause notice was issued to Shri Binod Das on 03.06.2022, for his gross misconduct on 31.05.2022, within the Club premises.

The Club Committee gave all reasonable opportunity to Shri Binod Das for filing his reply and hearing to the aforesaid show-cause within 08.06.2022 and thereafter, Shri Binod Das had submitted his reply on 03.06.2022, wherein he made some false and baseless allegations against the Returning Officer and did not make any reply to his indecent behaviour and conduct on 31.05.2022. Then, after discussion of the incident of 31.05.2022 and considering the CCTV footage, the Club Committee had suspended Shri Binod Das for 6 continuous months, which was communicated to him.

Against the said suspension order, Shri Binod Das preferred an appeal on 17.06.2022, against the Returning Officer of the General Election 2022-24 and he had also annexed one verification certificate issued by Controller of Examination, Gauhati University dated 14.06.2022, to one Rajib Dutta, along with the appeal dated 17.06.2022, wherein it is stated that the Controller of Examinations, Gauhati University, verified the mark-sheet of B.Com Part-II Examination, bearing Roll No. E/6243, R.No.195 of the year 1996 and the contents were found correct and the result was declared as passed. Thereafter, the Executive Committee reduced the suspension period to 2 months. Thereafter, Shri Binod Das filed one review petition before the General Council against his suspension

from membership of the Club and the review petition was taken up in the Annual General Meeting of the Club held on 26.06.2022, wherein suspension of Shri Binod Das was reduced to one month, till 09.07.2022.

However, the said verification certificate, issued by the Gauhati University, filed by Shri Binod Das is found to be a forged document and the same does not tally with the official record of the Controller of Examinations, Gauhati University. Then on 05.08.2022 the Returning Officer of General Election for the year 2022-24, had filed a written complaint before the General Secretary alleging that Shri Binod Das had submitted false verification certificate with his appeal dated 17.06.2022 and thereby mislead and misrepresented the club-committee by forged verification certificate, enclosing one letter from Deputy Controller of Examinations of Gauhati University.

Then, the General Secretary of the Club, having found the allegations serious in nature, being supported by documentary proof, referred the same to the Executive Committee and the Executive Committee after deliberation decided to seek reply from Shri Binod Das and issued notice to him on 09.08.2022 and Shri Das submitted his reply on 30.08.2022, alleging that the Club Committee is being used for settling personal score and Dr. Ashim Choudhury, being Returning Officer, ceased to have any power to verify his educational qualification after completion of the Club election on 26.06.2022, but he did not state anything about his educational qualification. Thereafter, the Club Committee decided to call for Extra Ordinary Meeting of the General Council on 25.09.2022 at 12:00 noon, with the agenda to discuss the allegations levelled against Shri Binod Das, by Dr. Ashim Choudhury.

Then, Shri Binod Das preferred a title suit, being Title Suit No.569/2022 before the Court of Civil Judge No.2, Karmup(M), Guwahati and along with the title suit, he has also filed an application under Order 39 Rule 1 and 2 read with Section 151 of the CPC for grant of temporary injunction. But, the learned Civil Judge had decided to issue notice to the respondents of the title suit and the application under Order 39 Rule 1 and 2 CPC, vide impugned order dated 21.09.2022. Thereafter, Shri Binod Das preferred an appeal, being FAO No.51/2022, before this Court challenging the impugned order dated 21.09.2022, and also he had filed an application under Order 39 Rule 1 and 2 of the CPC for granting temporary injunction. Then, this Court vide order dated 23.09.2022 was pleased to dispose of the said application on the very first day, by granting ad-interim temporary injunction restraining the opposite parties from taking any coercive action including expulsion of the membership of the petitioner from India Club till next returnable date."

5. The present interlocutory application is preferred with the prayer as aforesaid.

6. Mr. Choudhury, learned Senior Counsel for the applicant, submits that in the order, dated 23.09.2022, while granting ad-interim temporary injunction, the basic requirement of granting injunction i.e. prima facie case, balance of convenience and irreparable loss, has not been discussed and without issuing notice to the present applicants, this Court has disposed of the application, though subsequently, the same had been modified and notice was issued to the present applicants.

5.1 Mr. Choudhury, submits that Shri Binod Das, the appellant in FAO

No.51/2022, is a member of the India Club and he had filed his nomination for being elected to the post of Joint Secretary of the India Club, in the General Election of the Club for the years 2022-24 and the educational qualification for being elected to the post of Joint Secretary is graduate as per Article 23(I)(6) of the Constitution and Rules of the Club and the appellant, while filing the nomination enclosed the photo copy of his mark-sheets of B.Com Part-I and Part-II. But, the Returning Officer had directed him to file his original mark sheet of B.Com 1st and 2nd year examination as well as pass certificate issued by Gauhati University in his name, as in view of the Constitution of the Club, the Joint Secretary should have a graduate degree and the same was in his authority being the Returning Officer and there was nothing wrong with the same. Mr. Choudhury further submits Then, on 31.05.2022, at about 12/12:30 p.m., Shri Binod Das entered into the Club and took out his nomination paper from the concerned file lying in the table of the Club Manager and tore apart of the same along with the documents and left the place. Thereafter, the matter was discussed in Club Committee and a decision was taken to suspend him for a period of 6 months and ultimately, the same was reduced to one month on an appeal and review petition filed by Binod Das. It is also the submission of Mr. Chudhury that along with the appeal Shri Binod Das had submitted one verification certificate issued by Controller of Examination, Gauhati University dated 14.06.2022, to one Rajib Dutta, wherein it is stated that the Controller of Examinations, Gauhati University, verified the mark-sheet of B.Com Part-II Examination, bearing Roll No. E/6243, R.No.195 of the year 1996 and the contents were found correct and the result was declared as passed. And thereafter, the Returning Officer, Dr. Ashim Choudhury got one reply from the Deputy Controller of Examinations, Gauhati University that the verification

certificate submitted by Shri Binod Das were found to be forged and then he had submitted a complaint to the General Secretary on 05.08.2022. Thereafter, the matter was discussed in detail and a response was sought from Shri Binod Das, wherein he submitted his reply and made some baseless allegations. Thereafter, the Club Committee decided to call for Extra Ordinary Meeting of the General Council and before the Extra Ordinary Meeting of the General Council, Shri Binod Das filed a title suit before the learned trial court, along with the petition for temporary injunction, wherein notice was issued and then he preferred an appeal being FAO No.51/2022 before this Court and also filed an application under Order 39 Rule 1 and 2 CPC, wherein the order in question was passed by this Court granting ad-interim injunction.

5.2 Mr. Choudhury, further submits that since granting of the ad-interim injunction and subsequent modification of the same, the matter was not listed for more than two years, for which no action could be taken against Shri Binod Das and there is urgent necessity that the order of temporary injunction has to be modified. Alternatively, Mr. Choudhury also submits that the matter may be remanded to the learned Trial Court to decide the injunction petition pending there, wherein the present applicant/respondents had already filed the objection and the learned Trial Court may be directed to dispose of the same after hearing both the parties and till then, the interim protection granted by this Court may be extended.

7. On the other hand, Mr. Biswas, learned counsel for the opposite party/appellant has vehemently opposed this petition. Mr. Biswas, submits that the General Election of the Club was over on 26.06.2022 and the election result of the office bearers of the Club has already been declared and Dr. Ashim Choudhury ceased to be a Returning Officer. And as such, Mr. Biswas submits,

he had no authority to lodge a complaint on 05.08.2022 and on the basis of which notice was issued to Shri Binod Das on 09.08.2022 and the meeting of the Executive Committee of the Club was held on 06.09.2022 and the complaint filed by Dr. Ashim Choudhury on 05.08.2022 was enclosed and he was not allowed to inspect the alleged forged documents and as per Article 10 of the Constitution of the Club, the Executive Committee can take cognizance of the disciplinary matter and the General Council is the appellate authority and in case of expulsion as proposed by the Club Committee, the General Council can decide the matter according to Article 10 of the Constitution of the Club and the Extra Ordinary Meeting of the General Council cannot be convened and/or held in respect of any disciplinary matter. Mr. Biswas, further submits that as per resolution of the Executive Committee, in its meeting held on 06.09.2022, the Extra Ordinary Meeting of the General Council is called by the applicants herein, the said Extra Ordinary Meeting of the General Council has no authority to deal with the disciplinary matter, being the same appellate authority and if any action is taken against the opposite party/appellant, then it will take away his right to prefer appeal against the decision of the club-committee. Further, Mr. Biswas submits that this Court has rightly extended the interim protection to the opposite party/appellant and therefore, it is contended to dismiss the petition.

8. Having heard the submission of learned Advocates of both the parties, I have carefully gone through the petition and the documents placed on record and also perused the Constitution of the Club, which is annexed with the application as Annexure-I.

9. Before we dwell upon the facts and circumstances of the case in hand it would be in the interest of justice to peruse some of the Article, specially Article 10, 17, 18, and 19 of the Constitution of the Club, as the entire dispute revolves

around the said Articles. Article 10 read as under:-

"The Club Committee shall take cognizance of any infraction of the constitution any bye laws of the club, violation of code of conduct and ask the member to make the preparation in the manner they consider fit, in case of failure to comply or should any circumstances occur or likely to occur to interrupt the harmony, affect the character or endanger the stability of the club, it shall be the duty of the committee to call upon any member to resign. If he or she declines to do so, they shall hold an in-house inquiry, wherein the member shall be given an opportunity to give explanation, if any. If the explanation is accepted, the matter shall stand closed. In case the member is found guilty, the club committee may impose any penalty except expulsion. In case, it proposes to expel the member, a meeting of the general council shall be called to decide the matter. During the interim period, the club committee may, in its discretion, suspend the offending member till the resolution of the matter by the general council. The matter of expulsion of a member may be decided, by ballot or otherwise, by the general council only if it is supported by two third of the members present in the meeting. The expelled member shall be debarred from all further privileges of membership and a note of the circumstances in each case shall be made in the register."

10. Article 17 of the Constitution of the Club provides for constitution and functions of General Council and Article 18 deals with Annual General Meeting and Article 19 deals with Extra Ordinary Meeting of the General Council, which read as under:-

"If 1/3rd of the permanent members makes a proper application in writing with signatures requesting the General Secretary to convene an extra ordinary meeting of the General Council, the later shall convene a requisitioned meeting within fifteen days. In case of default, the President himself shall convene such meeting within fifteen days.

The Club Committee meeting may be held as per requirement but it must meet once in a month.

The meeting of the sub committees may be held as frequently as

required.”

11. In the case in hand, it appears that Dr. Ashim Choudhury has lodged the complaint on 05.08.2022 alleging submission of forged verification Certificate in the appeal preferred by Shri Binod Das, the appellant in the FAO No.51/2022, enclosing the letter he had received from the Deputy Controller of Examinations, Gauhati University, in support of his allegation. Then, the General Secretary of the Club as per Article 23(v)(14) decided to attend the same. Considering the seriousness of the matter discussed the same in the Executive Committee and the Executive Committee decided to obtain reply from Shri Binod Das and a notice to that effect was issued on 09.08.2022 and Shri Binod Das had submitted his reply on 30.08.2022, wherein he made some allegations against the Returning Officer and the Returning Officer ceased to have any power being appointed for conducting election of the Club, which was over on 22.06.2022. Thereafter, the Club decided to call for an Extra Ordinary Meeting of the General Council on 25.09.2022 at 12:00 noon with the agenda to discuss the allegations levelled against Shri Binod Das by Dr. Ashim Choudhury.

12. Though, it is submitted by Mr. Biswas that the Extra Ordinary Meeting of the General Council has nothing to do with the disciplinary proceeding initiated against a member of the Club, yet, having carefully gone through the Article 10 of the Constitution of the Club, this Court is unable to record concurrence with the submission of Mr. Biswas, learned counsel for the opposite party/appellant herein. It is clearly provided in the said Article that if the Club Committee proposes to impose penalty of expulsion, then the meeting of the General Council has to be called. Article 19 provides for extra ordinary meeting of the General Council. A conjoint reading of Article 17, 18 and 19, reveals that there is no bar in dealing with the disciplinary matters by the extra ordinary meeting of

the General Council. Though it is being contended by Mr. Biswas that Extra Ordinary General Meeting of the General Council cannot take up the disciplinary matter yet, the same cannot be accepted, as it is the same General Council which has to meet as per the requirement, as provided in Rule 19.

13. It is a fact that General Council is the appellate authority and it can hear an appeal against the decision of the club-committee as per Rule 17(j) and as per Rule 17(1). But at the same time it has also the power to suspend, expel and impose penalty on member for the infraction.

14. It also appears that the decision to convene the Extra Ordinary General Meeting of the General Council was taken in the meeting of the Executive Committee held on 06.09.2022, and except the President all the members (10 in number) decided to refer the matter to the Extra Ordinary General Meeting of the General Council. Further, it appears that the Committee had found that the entire matter, concerning Shri Binod Das, is of grave nature and unprecedented and it has tarnished the image of the Club, that being so, it cannot be said that no reason was assigned in the minutes of the meeting of the Executive meeting held on 06.09.2022.

15. Indisputable, the injunction petition is still pending before the learned trial court. In the said petition, the applicant/respondent had also filed written objection. Therefore, the learned counsel for the applicant/respondent contended to remand the matter to the learned trial court with a direction to dispose of the same in a time bound manner.

16. Taking note of the submission of the learned Advocates of both the parties, and also taking note of the relevant provisions of the Constitution of the Club, this Court is inclined to remand the matter to the learned Trial Court

granting liberties to the parties to raise the points before the learned trial court, wherein the injunction petition is pending and the applicant/respondent had herein also had filed written objection.

17. However, the learned trial court is directed to hear both the parties on the injunction petition lying before it and to dispose of the same in accordance with law, preferably, within a period of 1(one) month from the date of receipt of a certified copy of this order, without being influenced by any of the observations made herein above. And till disposal of the injunction petition, the interim protection extended to Shri Binod Das, the opposite party/appellant herein, by this court, shall continue.

18. In terms of above this I.A.(Civil) No. 564/2023 and the FAO No. 51/2022, stands disposed of.

JUDGE

Comparing Assistant