

A.F.R.

HIGH COURT OF ORISSA: CUTTACK

W.A. No.260 of 2011

From judgment dated 17.03.2011 passed by the learned Single Judge of this Court in W.P.(C) No.19826 of 2010.

Sanjay Kumar Neura,
Son of Dhan Sai Neura, Secretary for and on
behalf of Board of Directors, Rotary Club of Bhubaneswar
Cosmopolitan, At present residing at Plot No.G.1-71,
PO: VSS Nagar, PS: Sahid Nagar, Bhubaneswar,
Dist: Khurda

... Appellant

-Versus-

Ed. Futa, General Secretary, TRF of
Rotary International,
and others

... Respondents

For Appellant : M/s. R.C.Sarangi, M.K.Pattnaik,
S.Jena, A.K.Mohanty

For Respondents : Mr.B.H.Mohanty,
M/s. R.R.Sahoo, S.M.Patnaik,
D.Mohanty & S.Nanda

P R E S E N T:

**THE HONOURABLE THE CHIEF JUSTICE SHRI.V.GOPALA GOWDA
AND
THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA**

Date of Judgment:30.03.2012

B.N.MAHAPATRA,J. In this Writ Appeal, the appellant challenges correctness/legality of the judgment dated 17.03.2011 passed by a learned Single Judge of this Court in W.P.(C) No.19826 of 2010 wherein the order dated 11.10.2010 passed in F.A.O. No.105 of 2009 by the

learned Additional Special Judge (Vigilance)-cum-Additional District Judge, Bhubaneswar, maintaining the order dated 19.12.2009 passed in I.A. No.558 of 2008 by the learned Civil Judge (Junior Division), Bhubaneswar was confirmed.

2. The facts and circumstances giving rise to filing of the present Writ Appeal in a nutshell are as follows:-

One Sanjay Kumar Neura describing himself as Secretary for and on behalf of Board of Directors of Rotary Club of Bhubaneswar Cosmopolitan has filed the present Writ Appeal. The respondents are the Office bearers of the Rotary International under which the Rotary Club of Bhubaneswar Cosmopolitan is a chartered Club. The Rotary International is an Association of Rotary Clubs throughout the World (R.I.C.-2). The Rotary International is an organization of business and professional leaders united world wide to provide service to the humanity to encourage high ethical standards in all vocations and help to build goodwill and peace across the World. The Rotary Club of Bhubaneswar Cosmopolitan is connected with the Rotary International having certain control and guidance which is of course to be guided as per the Manual of Procedure (MoP) published by Rotary International. Such Manual provides various provisions covering various guidelines including constitution of Rotary International, Bye-law of Rotary International, recommended Rotary Club bye-law with other guidelines. On 06.12.2008, the plaintiff-Club received an e-mail allegedly issued on

01.12.2008 by defendant No.1 through which the plaintiff was instructed to discontinue the membership of previous President Sri P.K.Swain, an active member of the plaintiff's Club on or before 31.12.2008, on account of some allegations indicating his involvement in mismanagement of matching grant projects during the course of his tenure as President. There was an indication in the said letter that if Sri P.K.Swain is not expelled from membership of the Club of the plaintiff, the membership of Club itself would be terminated. In response to such letter, the Rotary Club of Bhubaneswar Cosmopolitan submitted reply on 10th December, 2008 indicating that such a course of action is not permissible as it would amount to offending the statutory right as well as legal right of a member, who can only be terminated from the membership of the Club within the four corners of provisions of the Bye-law and principles of natural justice. In spite of such letter, defendant No.1 issued another letter dated 15.12.2008, in which it was specifically stated that if the plaintiff's Club continues to honour the membership of the previous President Sri P.K.Swain, the membership of the said Club would be terminated from Rotary International.

3. According to the plaintiff-appellant, the direction with regard to the discontinuation of membership of Sri Swain being not in accordance with Bye-laws, the plaintiff-appellant did not carry out the said direction. However, apprehending termination of membership of the Club, the plaintiff-appellant instituted C.S. No.452 of 2008 and filed I.A.

No.558 of 2008 for interim relief under Order 39 Rules 1 and 2 read with Section 151, CPC. The learned Civil Judge (Junior Division) on 27.12.2008 under Order 39 Rule 3, CPC granted interim protection and issued notice to opposite parties to show cause. Some of the opposite parties entered appearance and after hearing both parties interim order granted on 27.12.2008 was modified to the extent that the above protection was to be availed concerning the threat of termination as embodied in the letter dated 01.12.2008. However, the membership of the petitioner's Club has been terminated by the Rotary International during pendency of the suit mainly on account of its default in payment of the dues before expiry of 270 days from the due date.

4. On 19.12.2009, the plaintiff-appellant filed petition before the Trial Court with a prayer for restoration of membership through order of mandatory injunction on the allegation that the same has been terminated by opposite parties without adhering to the procedure contained in their bye-laws. According to the plaintiff-appellant, the Rotary Club of Bhubaneswar Cosmopolitan has never defaulted in payment of dues and therefore, termination of the membership of the Club is illegal and violative of bye-laws and the Club is entitled to the interim remedy of restoration of membership by way of mandatory injunction.

5. The defendant-respondents submitted a joint written statement asserting that the suit has become infructuous in view of

termination of membership of the Club. Maintainability of the suit is challenged on the ground that membership of the Club has been terminated on a cause which is independent of the cause of action for which the suit has been filed. Further, once the Rotary International terminated membership of the plaintiff's Club for default in payment of dues and communicated the order of termination dated 09.03.2009, plaintiff is not entitled to any relief claimed in the suit. Under the provisions of the bye-laws, Rotary International has every right to suspend and terminate membership of a Club. Maintainability of the suit was also challenged on the ground that the plaintiff-appellant, has no *locus standi* to bring the suit in a representative capacity as the plaintiff's Club is neither a registered body nor a legal person in the eye of law.

6. The learned Civil Judge (Jr. Division), Bhubaneswar considering the rival contentions dismissed I.A. No.558 of 2008 as infructuous. The learned First Appellate Court confirmed the order mainly on the ground that the action taken by the Rotary International is in accordance with the provisions of bye-laws. The learned Single Judge dismissed the writ petition with a reasoned order holding that there is no infirmity and illegality in the orders passed by the trial Court as well as the First Appellate Court. Hence, the present writ appeal.

7. Mr.R.C.Sarangi, learned counsel appearing on behalf of the plaintiff-appellant submitted that the orders passed by the Courts below are violative of Articles 14 and 21 of the Constitution of India and

therefore, the same are liable to be quashed. The First Appellate Court has acted like a Court of records exercising extra-ordinary jurisdiction under Articles 226 and 32 of the Constitution of India and the learned Single Judge decided the writ petition as First Appellate Court. Despite time and again, the Hon'ble Supreme Court has specifically pointed out that while deciding the writ petition under Article 226 of the Constitution, this Court ought not to act like appellate Court but the Court is simply concerned with the jurisdictional error or errors apparent on the face of the record if available causing complete failure of justice in the particular part. In the present case, the specific allegation in the writ petition was limited to the question that the learned First Appellate Court without deciding the question of facts and law has come to an abrupt conclusion that the Civil Court cannot interfere with the internal affairs of a Club like Rotary International and virtually it has not discussed anything relating to the merit of the order passed by the learned trial Court. Therefore, dismissal of the appeal amounts to depriving a person from enjoying the right of appeal. The sole question before the learned Single Judge was that as to whether the procedure adopted by the First Appellate Court was in accordance with law and whether there was any jurisdictional error committed by the learned First Appellate Court while dismissing the appeal. That being the question in the writ petition, learned Single Judge had no other option than to quash the impugned order passed by the First Appellate Court and remand the matter to the First Appellate Court so

that the appellant's Club would have been given the right of appeal in true sense. But unfortunately, the learned Single Judge virtually has supplied the reason by making scrutiny of the factual aspects to justify the order passed by the learned First Appellate Court.

8. Mr. Sarangi, further submitted that while deciding the interim application, a Court has to apply its mind to the three necessary ingredients like prima facie case, balance of convenience and irreparable injury, but cannot decide the disputed issues like the cause of action and/or otherwise which can only be determined after the evidence is adduced by the parties. Therefore, the order of the learned Single Judge is apparently bad in law having exceeded the limitation provided for scrutinizing the order of the lower Court or the order impugned before it, which is in clear contravention of the observations made by the Hon'ble Supreme Court in the case of ***Surya Dev Rai Vs. Ram Chander Rai and others***, reported in 2003 (II) OLR SC 361. On this score alone, the judgment of the learned Single Judge is liable to be set aside. Learned Single Judge has failed to appreciate that at interlocutory stage, a Court cannot decide the disputed question of facts, particularly when it is the claim of the appellant's Club that its membership has been virtually terminated with the oblique motive on the ground of filing a suit and in spite of the interim injunction granted by flouting the judicial order taking advantage of the modified order. The question of disputed facts could not have been determined either by the learned Single Judge or by the learned

Trial Court for deciding the impugned application. The Court must make an endeavour to decide as to whether the lis is to be preserved or not because of undisputed question of facts. The undisputed fact was that on the date of filing of the suit, membership of the Club in question was not terminated. On the date of passing of the preliminary interim modified order, membership of the appellant's Club has also not been terminated. But just after passing of the order of modification, a plea was taken relating to non-payment of the dues which abruptly arose prima facie indicating the malice on the part of the respondents. Neither the learned trial Court nor the First Appellate Court nor the High Court has ever made any attempt to consider the effect of the allegations made in the plaint and the materials on record and to consider as to whether on the date of filing of the suit, the appellant's Club was entitled to an order of temporary injunction, which should have continued till disposal of the suit. The appellant has been highly prejudiced by excessive exercise of jurisdiction by the Courts below including the learned Single Judge and in the process the appellant's Club has helplessly been fighting against the orders which have been passed in derogation of the power conferred on different courts of law causing complete failure of justice to the appellant. The learned trial Court is required to be directed to consider the application for restoration of status-quo in respect of membership of appellant's Club.

9. Mr.B.H.Mohanty, learned counsel appearing for the respondents submitted that there is no infirmity or illegality in the orders

passed by the learned Single Judge of this Court as well as the trial Court and the First Appellate Court. Mr. Mohanty submitted that the Civil Suit is not maintainable as the plaintiff has no *locus standi* to bring the suit in a representative capacity as the petitioner's Club is neither a registered body nor a legal person in the eye of law. In support of his contention, he relied upon a judgment of the Andhra Pradesh High Court in the case of *Hyderabad Cricket Association, Gymkhana Grounds Vs. Cambridge Cricket Club and Anr.*, decided on 03.09.2002 (CRP No.2175 of 2002 and batch), 2002(5) ALD 818, 2002(6) ALT 268. It was further argued that since the membership of the Rotary Club of Bhubaneswar Cosmopolitan has been terminated on the ground of non-payment of dues, as provided under the bye-laws, and the suit in question was filed by the plaintiff altogether on different grounds, the I.A. arising out of C.S. No.452 of 2008 has rightly been held to be infructuous by the learned Trial Court and confirmed by the First Appellate Court and the learned Single Judge as well. The order of termination of the membership of the appellant's Club was passed, as per the minutes of meeting in January, 2009 by the Board of Directors of Rotary International reaffirming its decision taken in November, 2008, i.e., prior to institution of the suit. Reminder also issued to the Club as well as the District Governor on 08.10.2008 and on 07.01.2009.

10. On the rival contentions of the parties, the only question that falls for consideration by this Court is as to whether the learned Single Judge is justified in dismissing the writ petition on the ground

that the Trial Court as well as the First Appellate Court are justified to hold that in view of the termination of membership of the Rotary Club of Bhubaneswar Cosmopolitan by the Rotary International on the ground of non-payment of dues, the I.A. No.558 of 2008 arising out of C.S. No.452 of 2008 has become infructuous.

11. Facts which are not in dispute are that one Sanjay Kumar Neura describing himself as Secretary for and on behalf of Board of Directors of Rotary Club of Bhubaneswar Cosmopolitan filed Civil Suit No.452 of 2008 with the following prayers:-

- (a) To declare that letters dated 01.12.2008 and 15.12.2008 issued at the instance of the defendants are nullity in the eyes of law and are not legally enforceable;
- (b) To permanently restrain the defendants from terminating the membership of the plaintiff's Club without following provisions provided under the Bye-law of Rotary International and other legal procedures;
- (c) Pass a decree of mandatory injunction, directing the defendants to refrain from insisting the plaintiff to take any action beyond the scope of the Bye-law and constitution of the Club of the plaintiff and in case after filing of the suit it is found that the status quo of the plaintiff as on date of the suit has been altered by any means;

- (d) Decree of mandatory injunction passed directing restoration of the status quo of the plaintiff's Club as on the date of the suit;
- (e) Decree the suit with cost;
- (f) Grant any other relief / reliefs as would be deemed just and proper.

12. Along with Suit, the plaintiff-appellant filed I.A. No.558 of 2008 on 20.12.2008 under Order 39 Rule Rules 1 and 2 read with Section 151, CPC with a prayer to temporarily restrain opposite parties from terminating membership of the petitioner's Club pursuant to letters dated 01.12.2008 and 15.12.2008 and also without following the procedure provided under Bye-law of the Rotary International pending disposal of the suit.

On 27.12.2008 the learned Trial Court has issued ad-interim injunction to the following effect:-

“... Hence, the petition is allowed. The O.Ps. are hereby temporarily restrained from terminating the membership of the plaintiff Club as stated in the letters sent on 1.12.2008 by the Rotary International through O.P. No.1. This order is to be given effect to subject to the compliance of the proviso (a) of Order-39 Rule-3 CPC. It shall remain in force till the appearance of the O.Ps. in this case. Issue notice to the O.Ps. fixing the case to 20.1.2009 to show cause as to why the order of injunction shall not be made absolute.”

13. On 20.01.2009, opposite parties filed written show cause challenging order of injunction and prayed for vacation of the same. After

hearing both parties, learned Trial Court has modified the order in the following manner:-

“Considering the submissions of both the parties, I feel it necessary to restrain the O.Ps. from terminating the membership of the club only on the ground of its (the Plaintiff's) failure to terminate the membership of P.K.Swain – a Rotarian Member of the Club without adhering to their Bye laws & Constitution until next day. They are at liberty to take action in accordance with their Bye-laws and Constitution. With these modifications, the order dated 27.12.08 is extended till next date.”

14. On 09.03.2009, Rotary International issued a final letter terminating the membership of the Club for non-payment of financial obligation to Rotary International. On 21.04.2009, the plaintiff-appellant filed a petition before the Trial Court with a prayer for restoration of membership of the Club through order of mandatory injunction on the allegation that the same has been terminated by the opposite parties without adhering to the procedure contained in their Bye-law and principles of natural justice. Learned Trial Court on 19.12.2009 passed the final order in I.A. No.558 of 2008 and dismissed the same as infructuous.

15. The First Appellate Court placing reliance on the judgment of the Hon'ble Supreme Court passed on 02.05.2005 in the case of *Suresh Bhasin Vs. Ramesh Chander & Ors.*, in SLP (Civil) No.8587 of 2005 confirmed the order of the Trial Court.

16. The learned Single Judge of this Court vide judgment dated 17.3.2011 passed in W.P.(C) No.19826 of 2010 has confirmed the order dated 11.10.2010 passed in F.A.O. No.105 of 2009 by the Additional Special Judge (Vigilance)-cum-Additional District Judge, Bhubaneswar.

17. The Rotary Club of Bhubaneswar Cosmopolitan is a constituent of Rotary International, the Apex Body. Their affairs are guided by MoP. The specific case of the appellant is that its membership has been terminated by the respondents without adhering to procedure contained in Bye-laws. No material was brought to our notice to show that before terminating the membership of the appellant-Club, opportunity of hearing was provided to the appellant-Club. Termination of the membership of the appellant-Club has a civil consequence. Nothing was also brought to our notice as to whether the procedure provided in the Bye-laws for termination of membership of constituent Club has been followed before terminating the membership of the appellant-Club. These basic issues have not been adjudicated by any of the lower Courts or the learned Single Judge of this Court.

18. From the orders of the First Appellate Court, it appears that it has not decided the question of fact and law involved in the case. The judgment of the First Appellate Court is based on a foundation that the Civil Court cannot interfere with the internal affairs of the Club. Virtually the First Appellate Court has not decided anything relating to the merit of the order passed by the learned trial Court in interim application.

Even though such question was raised before the learned Single Judge, the learned Single Judge has not adjudicated the said issue. As it appears, learned Single Judge has justified the conclusion drawn by the First Appellate Court by supplying the reasons to it. The learned Counsel for the appellant has rightly submitted that while deciding the interim application, the Court should not decide the dispute like the cause of action which can only be determined after the evidence is adduced. The Hon'ble Supreme Court in the case of *Surya Dev Rai (supra)* has held as under:

37. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell even at the risk of repetition and state the same as hereunder:

xx

xx

xx

(3) Certiorari, under Article 226 of the Constitution is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction – by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overlapping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised keeping the subordinate Courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercised a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has

occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

xx

xx

xx

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.”

19. Needless to say that at interlocutory stage, a Court cannot decide the disputed questions of fact. In the instance case, the claim of the appellant-Club that its membership has been terminated with oblique motive on the ground of filing of suit and in spite of interim order of injunction flouting the judicial order taking advantage of the modified order without following the procedure contained in the Bye-laws in compliance with the principles of natural justice. The plea of the respondents is that they have done it according to the Bye-laws of the institution and not based on the impugned letter, but based on another legitimate cause. This rival contention is purely a disputed question of fact, which cannot be adjudicated while deciding interlocutory application without recording evidence. Admittedly, on the date of filing of the suit, the membership of the appellant-Club had not been terminated. On the date of passing of preliminary interim modified order also the membership of the appellant-Club was not terminated. It was only just after passing the order of modification, the membership of the Club was terminated on the ground of non-payment of dues. Neither the

trial Court nor the First Appellate Court nor the High Court has considered as to whether on the date of institution of the suit, the appellant-Club was entitled for an order of an injunction which should be continued till disposal of the suit. In absence of adjudication of this basic question, in the interlocutory application which goes to the route of the case, the orders passed by the trial court, First Appellate Court and learned Single Judge are not sustainable in law.

20. Decision of the Bombay High Court in ***Satyavart Sidhantalankar v. Arya Samaj, Bom***, AIR 1946 Bom 516, has no help to the respondents as in that case issue before the Bombay High Court was with regard to competency of an unregistered club to sue and to be sued. Maintainability issue has not been decided by the trial court. That issue will be decided in the suit.

21. In view of the above, judgment of the learned Single Judge dated 17.3.2011 passed in W.P.(C) No.19826 of 2010 and the order dated 11.10.2010 passed in F.A.O. No.105 of 2009 by the First Appellate Court and the order dated 19.12.2009 passed in I.A. No.558 of 2008 by the trial court are set aside.

The matter is remanded back to the trial court for consideration of the appellant's interim application afresh for restoration of status quo in respect of the membership of the appellant-Club as well as its prayer for temporary injunction keeping in mind the three ingredients like prima facie case, balance of convenience and irreparable

injury. The trial court while deciding the interim application must take a prima facie view as to whether the membership of the appellant-Club has been terminated after strictly adhering to the provision of Bye-law governing the appellant-Club and respondent-Club and as to whether reasonable opportunity of being heard has been afforded to the appellant-Club before termination of its membership.

22. In the result, the Writ appeal is allowed.

.....
B.N.Mahapatra, J.

V. Gopala Gowda, C.J. *I agree.*

.....
Chief Justice