

IN THE GAUHATI HIGH COURT

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

ITANAGAR PERMANENT BENCH

CRP No. 22 (AP) of 2015

1. The Arunachal Pradesh Congress Committee (APCC),
Itanagar, Papum Pare District,
Arunachal Pradesh,
Represented by its President.
2. The President,
Arunachal Pradesh Congress Committee (APCC),
Rajiv Gandhi Bhawan, Itanagar,
Papup Pare District.

..... Petitioners.

- Versus -

Shri Kalikho Pul,
Member of the Legislative Assembly (MLA),
45-Hayuliang (ST) Assembly Constituency,
Anjaw District, Arunachal Pradesh.
(under expulsion).

..... Opposite Party.

Advocates for the Petitioners : Ms. Manjuli Dev,
Mr. B. Joseph,
Ms. P. Deb,
Ms. N. Deb.

Advocates for the Respondent : MR. P. K. Tiwari, Sr. Advocate.
Mr. Tony Partin,
Mr. K. Saxena,
Mr. Y. Rian,
Mr. U. Bori,
Mr. H. K. Jamoh.

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BEFORE
THE HON'BLE MR. JUSTICE M. R. PATHAK

Date of Hearing : 06.08.2015
Date of Judgment & Order : 06.10.2015

JUDGMENT AND ORDER (CAV)

Heard Ms. Monjuli Dev, learned counsel for the petitioners. Also heard Mr. P. K. Tiwari, learned Sr. counsel, assisted by Mr. K. Saxena learned counsels for the sole opposite party.

(2) The petitioners have filed this revision petition under Article 227 of the Constitution of India read with Section 151 of the Code of Civil Procedure for setting aside the order dated 18.06.2015 passed by learned Civil Judge (Junior Division), Capital Complex, Yupia in Misc (J) Case No. 51 of 2015 in Title Suit No. 14 of 2015 and also for quashing the proceeding of said Title Suit No. 14/2015, presently pending before the learned Civil Judge (Junior Division), Capital Complex, Yupia on the ground that the Civil Court does not have the jurisdiction to take cognizance of the suit preferred by the opposite party plaintiff since the matter pleaded by him in the plaint cannot confer jurisdiction upon the Civil Court.

(3) The brief facts of the case are that the petitioners herein are representing a political party, namely, Indian National Congress (INC, in short) Party in its provincial office in the state of Arunachal Pradesh. The sole opposite party a sitting Member of the Legislative Assembly in the State of Arunachal Pradesh from No. 28 Hayuliang (Schedule Tribe) Constituency, Anjaw District, won the last assembly election 2014 on a ticket from the Indian National Congress Party who is a member of the said political party for quite a long period. For certain reasons known to the State Congress Party, the petitioner No. 2, President of Arunachal

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Pradesh Congress Committee by his order number APCC/EXP/21/2009 dated 02.04.2015 expelled the sole opposite party from the said political party for a period of 6 (six) years with immediate effect for anti-party activities under the relevant Article XIX (f) (iv) of Clause 4 Sub-Clause (a) of the Constitution of said INC Party. Against the same, on 10.04.2015 the sole opposite party preferred an appeal before the Appellate Forum of the Party which is still pending for disposal.

(4) The opposite party in the meanwhile as a plaintiff instituted a suit being Title Suit No. 14 of 2015 before the Learned Civil Judge, Senior Division, Capital Complex, Yupia; amongst others (i) for a decree of declaration that the said order of his expulsion dated 02.04.2015 issued by the petitioner No. 2 is invalid, void ab-initio, without any authority and not liable to be acted upon, (ii) for a decree of declaration that the plaintiff (opposite party herein) continues to remain a member of the Indian National Congress having all the rights, title and interest over the said membership, (iii) to set aside and quash the impugned order dated 02.04.2015, (iv) for a decree of permanent injunction, restraining the defendants (petitioners herein) jointly and severally from expelling the plaintiff (opposite party) from the INC Party without following the procedures established by law, Constitution & Rules of the INC Party and (v) to debar the Speaker of the Arunachal Pradesh State Legislative Assembly from issuing any order declaring the plaintiff (opposite party) as an unattached Member of the said Legislative Assembly and/or if already issued, to declare the same as void ab-initio, illegal, null and void. Along with the said Title Suit, the sole opposite party/plaintiff as a petitioner also filed an application being Misc (J) Case No. 51 of 2015 under Order 39, Rules 1 & 2 read with Section 151 of the Code of Civil Procedure for grant of necessary injunction.

(5) The learned Civil Judge, Senior Division, Capital Complex, Yupia after hearing the Counsel for the opposite party/plaintiff initially passed

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and ex-parte ad-interim injunction order on 13.05.2015 directing the present petitioners/defendants not to give effect to the order dated 02.04.2015 passed by the petitioner No.2/defendant No. 2 and stayed the operation of the said order dated 02.04.2015 till the next date fixing 17.06.2015 for service report and the written objection by the present petitioners/ defendants. The learned Civil Judge, Senior Division, Capital Complex, Yupia thereafter transferred the said Title Suit to the Court of learned Civil Judge, Junior Division, Capital Complex, Yupia for its necessary disposal, wherein 18.06.2015 was the date fixed for objection hearing. The petitioners/ defendants filed their written statement in the said Title Suit as well as objection in the said Misc (J) Case and after hearing both the parties, learned Civil Judge, Junior Division, Capital Complex, Yupia by its order dated 18.06.2015 made the interim order dated 13.05.2015 passed earlier by the learned Civil Judge, Senior Division, Capital Complex, Yupia in Misc (J) Case No. 51 of 2015, absolute.

(6) Hence this civil revision petition by the petitioners/defendants.

(7) The contention of the petitioners herein are that the Indian National Congress is only a political party to carry out their own programs and it is not an association constituted under any authority of the law and that the opposite party/plaintiff was expelled from the said party for certain reasons followed by termination of his membership from the said party and his Title Suit does not disclose that any of his legal right has been interfered with or denied to him. The petitioners submitted that the opposite party in his case before the learned civil judge placed that there is a Constitution of the Party and by violating the provisions of the said Constitution of the party, the petitioners/defendants took penal action against him, which affected his civil rights. The petitioners submitted that the said Constitution of their Political Party is not a law within the meaning of sub-Section 3(a) under Article 13 of the Constitution of India and as such, there cannot be any suit of civil nature for enforcement of any

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provisions of the said Constitution of the Party concerned as preferred by the opposite party/plaintiff and as such said Civil Court below could not have entertain the suit in question since the same is not within the jurisdiction of the Court below as provided under Section 9 of the Code of Civil Procedure.

(8) The petitioners submitted that anything that relates to the party affair, the same is within the exclusive domain of the party concerned, which cannot be enforced by any order or decree that may be passed by a Civil Court and even if such an order or a decree is passed in the said suit in question, the same would not be executable. The petitioners also contended that by the order of the petitioner No. 2 dated 02.04.2015 expelling/terminating the sole opposite party from the INC party, no civil rights of the opposite party/plaintiff has been violated. Therefore, the petitioners submitted that the said suit of the opposite party/plaintiff is not maintainable.

(9) The petitioners urged that any disciplinary action involving suspension or termination of membership etc. from a political party are its internal matter, which does not vest any right on any member of the party and if anyone in the party does not subscribe to the principles and philosophy of the said party, such a member may be dropped from the party concerned, which cannot be called in for question before any Court of law, even by exercising Civil Jurisdiction. Petitioners also contended that the Civil Court is debarred from taking cognizance of any political activities, which does not constitute any right, title in favour of the member of the party like the opposite party in the present case.

(10) As such the petitioners submitted that the learned Courts below by entertaining and taking cognizance of the said Title Suit No. 14/2015 and Misc (J) Case No. 51/2015 of the sole opposite party/plaintiff, which are illegal and void ab-initio, committed serious material irregularity, that needs to be interfered with by the Court in exercising its jurisdiction

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conferred under Article 227 of the Constitution of India and therefore, the impugned order of injunction dated 18.06.2015 as well as the said Title Suit in question need to be set aside and quashed.

(11) Mr. P.K. Tiwari, learned Senior counsel stated that the opposite party/plaintiff is a senior party leader of Indian National Congress (INC, in short) from the State of Arunachal Pradesh for last 30 years and won 2014 State Legislative Election from 45 Hayuliang (ST) Assembly Constituency on INC Party ticket, who is representing the said Constituency in the State Assembly since 1995 on the tickets of the said Party.

(12) Mr. Tiwari submitted that the Constitution of the INC Party and the Disciplinary Rules incorporated therein cannot be elevated to the level of a validly enacted legislation or a statute. It is submitted that every person has an inherent right to bring a suit of civil nature unless such suit is barred by a constitutionally valid legislation or a statute and for maintainability of a suit and it does not require any such authority of law and in the absence of such legislation or a statute, the jurisdiction of Civil Court cannot be ousted to adjudicate a dispute between the parties.

(13) Mr. Tiwari also submitted that the Indian National Congress Party is a registered political party under the Election Commission of India following the procedure laid down in the Representation of Peoples Act, 1951 and Registration of Political Parties (Furnishing of Additional Particulars) Order, 1992 and the expulsion from the membership of such a party gives rise to a civil dispute as the expulsion from the membership of a club or a body in violation of internal rules of the club or body governing such expulsion gives rise to a civil dispute which can be adjudicated by a civil Court of competent jurisdiction only.

(14) It is contended on behalf of the opposite party/plaintiff that the continuation of membership of an association or a party is subject to the provisions of the Constitution of such association/party and the rules

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incorporated therein and when the rules provide for expulsion from membership of such association/party is in violation of the procedure prescribed for such expulsion, it gives rise to a civil dispute and such a dispute can be always adjudicated by a Civil Court. Mr. Tiwari submitted that in the suit in question, it is the pleaded case of the plaintiff that the order of his expulsion from the INC Party is in violation of principle of natural justice in contravention of the mandatory provisions of the disciplinary rules of the party and such expulsion from membership of the party does not fall within the scope political activities, since the membership of a party once granted creates vested civil right and pendency of opposite party/plaintiff's appeal before the appellate forum of the INC Party cannot oust the jurisdiction of the Civil Court. According to the opposite party/plaintiff an internal rule of a party cannot be used to oust the jurisdiction of the Civil Court and that even if the contention of the petitioners are accepted that during the pendency of an appeal, the aggrieved party like the opposite party/plaintiff is barred by the rules of the party/association to seek legal remedy and/or such rules of the party/association forbids an aggrieved member of the party to seek legal remedy, then such an event would create an absurd situation, since by keeping such an appeal pending forever, an aggrieved member like the opposite party/plaintiff could be successfully deprived of his legal remedy in a Court of law during his lifetime.

(15) Mr. Tiwari on behalf of the opposite party/plaintiff placed reliance on the judgments of the Hon'ble Supreme Court reported in AIR 1963 SC 1144 (*T.P. Daver -Vs- Lodge Victoria*), AIR 1966 SC 1718 (*Abdul Waheed Khan -Vs- Bhawani*), AIR 1967 SC 781 (*Sri Vedagiri Lakshmi Narasimha Swami Temple -Vs- Induru Pattabhirami Reddi*), AIR 2000 SC 2220 (*State of A.P. -Vs- Manjeti Laxmi Kantha Rao*), AIR 2002 SC 2308 (*M/S. ITI Ltd. -Vs- Siemens Public Communications Network Ltd.*), (1974) 2 SCC 393 (*Ganga Bai -Vs- Vijay Kumar*), (2003) 7 SCC 350 (*Ramesh Chand*

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Ardawatiya -Vs- Anil Panjwani) and 2014 Supreme (Mah) 1560 (*Gerald A. Fernandez -Vs- Bandra Gymkhana*).

(16) Both the parties have advanced their arguments at length and as agreed by them, this matter is taken up for final consideration at the Motion stage itself.

(17) I have gone through the judgments cited by the opposite party and considered the same.

(18) The issues involved in this case are whether a Civil Court has a jurisdiction to entertain a suit relating to expulsion & termination of membership from a political party expelled/terminated as per party's own Constitution, more particularly when an appeal against such order of expulsion/termination is pending before the appellate authority of the said party?

(19) Section 9 of the Code of Civil Procedure, 1908 as amended reads as follows:

"9. Courts to try all civil suits unless barred. - The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation I. - A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II. - For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place."

(20) As such a Civil Court has jurisdiction to try a suit if two conditions are fulfilled, namely, (i) that such must be of a civil nature and (ii) the cognizance of such a suit should not have been expressly or impliedly barred.

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(21) With regard to 'civil nature' the Hon'ble Supreme Court in the case of *Most Rev. P.M.A. Metropolitan -Vs- Moran Mar Marthoma*, reported in 1995 Supp (4) SCC 286, have held as follows:

"28. One of the basic principles of law is that every right has a remedy. *Ubi jus ibi remedium* is the well-know maxim. Every civil suit is cognizable unless it is barred, "there is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous the claim, that the law confers no such right to sue" *Ganga Bai v. Vijay Kumar* (AIR 1974 SC 1126). The expansive nature of the section is demonstrated by use of phraseology both positive and negative. The earlier part opens the door widely and latter debars entry to only those which are expressly or impliedly barred. The two explanations, one existing from inception and latter added in 1976 bring out clearly the legislative intention of extending operation of the section to such religious matters where right to property or office is involved irrespective of whether any fee is attached to the office or not. The language used is simple but explicit and clear. It is structured on the basic principle of a civilised jurisprudence that absence of machinery for enforcement of right renders it nugatory. The heading which is normally key to the section brings out unequivocally that all civil suits are cognizable unless barred. What is meant by it is explained further by widening the ambit of the section by use of the word 'shall' and the expression "all suits of a civil nature" unless "expressly or impliedly barred".

29. Each word and expression casts an obligation on the court to exercise jurisdiction for enforcement of right. The word 'shall' makes it mandatory. No court can refuse to entertain a suit if it is of description mentioned in the section. That is amplified by use of expression "all suits of civil nature". The word 'civil' according to dictionary means "relating to the citizen as an individual; civil rights". In *Black's Law Dictionary* it is defined as "relating to private rights and remedies sought by civil actions as contrasted with criminal proceedings". In law it is understood as an antonym of criminal. Historically the two broad classifications were civil and criminal. Revenue, tax and company etc. were added to it later. But they too pertain to the larger family of 'civil'. There is thus no doubt about the width of the word 'civil'. Its width has been stretched further by using the word 'nature' along with it. That is even those suits are cognizable which are not only civil but are even of civil nature. In Article 133 of the Constitution an appeal lies to this Court against any judgment, decree or order in a "civil proceeding". This expression came up for construction in *S.A.L. Narayan Row v. Ishwarlal Bhagwandas* (AIR 1965 SC 1818). The Constitution Bench held "a proceedings for relief against infringement of civil right of a person is a civil proceedings". In *Arbind Kumar Singh v. Nand Kishore Prasad* (AIR 1968 SC 1227) it was held "to extend to all proceedings which directly affect civil rights". The dictionary meaning of the word 'proceedings' is "the institution of a legal action, any step taken in a legal action". In *Black's Law Dictionary* it is explained as:

"In a general sense, the form and manner of conducting juridical business before a court or judicial officer. Regular and orderly progress in form of law, including all possible steps in an action from its commencement to the execution of judgment. Term also refers to administrative proceedings before agencies, tribunals, bureaus or the like."

The word 'nature' has been defined as "the fundamental qualities of a person or thing; identity or essential character; sort; kind; character". It is thus wider in

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content. The word 'civil nature' is wider than the word "civil proceeding". The section would, therefore, be available in every case where the dispute has the characteristic of affecting one's rights which are not only civil but of civil nature.

(22) The Hon'ble Supreme Court in the case of *Firm Seth Radha Kishan (Deceased) representd by Hari Kishan & other -Vs- Administrator, Municipal Committee, Ludhiana*, reported in *AIR 1963 SC 1547*, have held that -

"Under Section 9 of the Code of Civil Procedure the court shall have jurisdiction to try all suits of civil nature excepting suits of which cognizance is either expressly or impliedly barred. A statute, therefore, expressly or by necessary implication, can bar the jurisdiction of civil courts in respect of a particular matter. The mere conferment of special jurisdiction on a tribunal in respect of the said matter does not in itself exclude the jurisdiction of civil courts. The statute may specifically provide for ousting the jurisdiction of civil courts; even if there was no such specific exclusion, if it creates a liability not existing before and gives a special and particular remedy for the aggrieved party, the remedy provided by it must be followed. The same principle would apply if the statute had provided for the particular forum in which the remedy could be had. Even in such cases, the civil court's jurisdiction is not completely ousted. A suit in a civil court will always lie to question the order of a tribunal created by a statute, even if its order is, expressly or by necessary implication, made final, if the said tribunal abuses its power or does not act under the Act but in violation of its provisions."

(23) The Hon'ble Apex Court in the case of *Abdul Waheed Khan -Vs- Bhawani*, reported in *AIR 1966 SC 1718*, have observed that -

"Under Section 9 of the Code of Civil Procedure, a civil court can entertain a suit of a civil nature except a suit of which its cognizance is either expressly or impliedly barred. It is settled principle that it is for the party who seeks to oust the jurisdiction of a civil court to establish his contention. It is also equally well settled that a statute ousting the jurisdiction of a civil court must be strictly construed. "

(24) The Hon'ble Supreme Court in the case of *Bhatia Coop. Housing Society -Vs- D.C. Patel*, reported in *AIR 1966 SC 1718*, have held that -

"It is well settled that a civil court has inherent power to decide the question of its own jurisdiction, although, as a result of its enquiry, it may turn out that it has no jurisdiction over the suit."

(25) In the case of *Sankaranarayanan Potti -Vs- K. Sreedevi*, reported in (1998) 3 SCC 751 the Hon'ble Supreme Court have held that -

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"It is obvious that in all types of civil disputes civil courts have inherent jurisdiction as per Section 9 of the Code of Civil Procedure unless a part of that jurisdiction is carved out from such jurisdiction, expressly or by necessary implication, by any statutory provision and conferred on any other tribunal or authority."

(26) The Hon'ble Apex Court in the case of *Abdulla Bin Ali -Vs- Galappa*, reported in (1985) 2 SCC 54, have observed that –

"There is no denying the fact that the allegations made in plaint decide the forum. The jurisdiction does not depend upon the defence taken by the defendants in the written statement."

(27) In the case of *Pankaj Bhargava -Vs- Mohinder Nath*, reported in (1991) 1 SCC 556, the Hon'ble Supreme Court observed that –

"The test of jurisdiction over the subject matter is whether the Court or Tribunal can decide the case at all and not whether the court has authority to issue a particular kind of order in the course of deciding the case. A court is said to have jurisdiction of the subject matter of a particular controversy if the court has authority to hear and decide causes of a class to which the particular controversy belongs. In defining jurisdiction of the subject matter in these terms, the courts have emphasized that the jurisdiction of a court depends upon its right to decide the case and not upon the merits of its decision."

(28) The Hon'ble Apex Court in the case of *Dhannalal -Vs- Kalawatibai*, reported in (2002) 6 SCC 16, have held that –

"The plaintiff is dominus litis, that is, master of, or having dominion over, the case. He is the person who has carriage and control of an action. In case of conflict of jurisdiction the choice ought to lie with the plaintiff to choose the forum best suited to him unless there be a rule of law excluding access to a forum of the plaintiff's choice or permitting recourse to a forum will be opposed to public policy or will be an abuse of the process of law."

(29) The Hon'ble Apex Court in the case of *Bank of Baroda -Vs- Moti Bhai*, reported in (1985) 1 SCC 475 have held that –

"On the question of jurisdiction, one must always have regard to the substance of the matter and not to the form of the suit."

(30) In the case of *Anne Besant National Girls High School -Vs- Dy. Director of Public Instruction*, reported in (1983) 1 SCC 200 the Hon'ble Supreme Court have held that –

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"A suit can lie to challenge an appointment in an aided school against orders of education authorities provided it can established that the orders are unsustainable in law. Civil Court has jurisdiction to examine whether action or decision of an administrative authority was intra vires the relevant rules even if the rules are in the nature of administrative or departmental instructions."

(31) The Hon'ble Supreme Court in the case of *Prathama Bank -Vs- Vijay Kumar Goel*, reported in (1989) 4 SCC 441 have held that –

"The suit in Civil Court challenging the order of termination of services of an employee of a regional rural bank as maintainable."

(32) In the cases of *Dewaji -Vs- Ganpatlal*, reported in AIR 1969 SC 560 and *Ram Swarup -Vs- Shikar Chand*, reported in AIR 1966 SC 893, the Hon'ble Supreme Court determined the two tests that are applied for the purpose of determining the exclusion of jurisdiction of the Civil Court and they are – (i) *whether the legislative intent to exclude is expressed explicitly or by necessary implication* and (ii) *whether the statute in question provides for an adequate and satisfactory alternative remedy to a party aggrieved by an order made under it.*

(33) A four Judges Bench of the Hon'ble Supreme Court in the case of *T.P. Daver -Vs- Lodge Victoria*, reported in AIR 1963 SC 1144 have held as follows:

"4. The source of the power of associations like clubs and lodges to expel their members is the contract on the basis of which they become members. This principle has been restated by Lord Morton in Bonsor v. Musicians' Union [LR 1956 AC]. There, one Bonsor who became a member of a trade union, was expelled. In that context Lord Morton observed:

"When Mr Bonsor applied to join the respondent union, and his application was accepted, a contract came into existence between Mr Bonsor and the respondent, whereby Mr Bonsor agreed to abide by the rules of the respondent union, and the union impliedly agreed that Mr Bonsor would not be excluded by the union or its officers otherwise than in accordance with the rules."

This contractual origin of the rule of expulsion has its corollary in the cognate rule that in expelling a member the conditions laid down in the Rules must be strictly complied with. In Maclean v. Workers' Union [LR (1929) 1 Ch D 602, 623] the contractual foundation of the power is described thus:

"In such a case as the present, where the tribunal is the result of rules adopted by persons who have formed the association known as a trade

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union, it seems to me reasonably clear that the rights of the plaintiff against the defendants must depend simply on the contract and that the material terms of the contract must, be found in the rules."

Proceeding on that basis, the learned Judge observed:

"It is certain, therefore, that a domestic tribunal is bound to act strictly according to its rules and is under an obligation to act honestly and in good faith."

The same idea was expressed by the Calcutta High Court in Ezra v. Mahendra Nath Banerji [ILR (1946) 2 Cal 88, 109] thus:

"...where the rule provides in any particular respect that some condition must be fulfilled, then that condition must be strictly complied with, since the power of expulsion is itself dependent on the terms of the rule."

5. The next question is whether the doctrine of strict compliance with rules implies that every minute deviation from the rules, whether substantial or not, would render the act of such a body void. The answer to this question will depend upon the nature of the rule infringed; whether a rule is mandatory or directory depends upon each rule, the purpose for which it is made and the setting in which it appears. We shall consider this aspect of the doctrine when we deal with the argument of the learned counsel that in the present case the rules have not been complied with.

6. The scope of the jurisdiction of a civil court vis-a-vis the decisions of tribunals is also well settled. In Maclean v. Workers' Union (supra) Maugham, J., observed:

"It appears to me that we have no power to review the evidence any more than have a power to say whether the tribunal came to a right conclusion."

Much to the same effect the Judicial Committee observed in L.A.P.O. Beilly v. C.C. Gittens [AIR 1949 PC 313] at p. 316:

"... It is important to bear in mind that neither the learned Judge nor Their Lordships' Board is entitled to sit as a court of appeal from the decisions of a domestic tribunal such as the Stewards of the Trinidad Turf Club."

Later on the Privy Council stated at p. 317:

"All these matters, however, are essentially matters for the domestic tribunal to decide as it thinks right. Provided that the tribunal does not exceed its jurisdiction and acts honestly and in good faith, the court cannot intervene, even if it thinks that the penalty is severe or that a very strict standard has been applied."

7. Another aspect which may also be noticed is how far and to what extent the doctrine of bias may be invoked in the case of domestic tribunals like those of clubs. The observations of Maugham, J. in Maclean case (supra) in this context may be noticed. The learned Judge observed in that case thus:

"A person who joins an association governed by rules under which he may be expelled, ... has in my judgment no legal right of redress if he be expelled according to the rules, however unfair and unjust the rules or the action of

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the expelling tribunal may be, provided that it acts in good faith.... The phrase, 'the principles of natural justice', can only mean in this connection the principles of fair play so deeply rooted in the minds of modern Englishmen that a provision for an inquiry necessarily import that the accused should be given his chance of defence and explanation. On that point there is no difficulty. Nor do I doubt that in most cases it is a reasonable inference from the rules that if there is anything of the nature of a lis between two persons, neither of them should sit on the tribunal."

Another difficulty that one is confronted with in proceedings held by committees constituted by clubs is to demarcate precisely the line between the prosecutor and the Judge. Maugham, J. noticed this difficulty and observed in Madean case (supra) at p. 626 thus:

"In many cases the tribunal is necessarily entrusted with the duty of appearing to act as prosecutors as well as that of judges; for there is no one else to prosecute. For example, in a case where a council is charged with the duty of considering the conduct of any member whose conduct is disgraceful and of expelling him if found guilty of such an offence, it constantly occurs that the matter is brought to the attention of the council by a report of legal proceedings in the press. The member is summoned to appear before the council. The council's duty is to cause him to appear and to explain his conduct. It may be that in so acting the council are the prosecutors. In one sense they are; but if the regulations show that the council is bound to act as I have mentioned and to that extent to act as prosecutors, it seems to be clear that the council is not disqualified from taking the further steps which the rules require."

Though it is advisable for a club to frame rules to avoid conflict of duties, if the rules sanction such a procedure, the party, who has bound himself by those rules, cannot complain, unless the enquiry held pursuant to such rules discloses mala fides or unfair treatment.

8. The following principles may be gathered from the above discussion. (1) A member of a masonic lodge is bound to abide by the rules of the lodge; and if the rules provide for expulsion, he shall be expelled only in the manner provided by the rules. (2) The lodge is bound to act strictly according to the rules whether a particular rule is mandatory or directory falls to be decided in each case, having regard to the well settled rules of construction in that regard. (3) The jurisdiction of a civil court is rather limited; it cannot obviously sit as a court of appeal from decisions of such a body; it can set aside the order of such a body, if the said body acts without jurisdiction or does not act in good faith or acts in violation of the principles of natural justice as explained in the decisions cited supra."

(34) It is the pleaded case of the opposite party/plaintiff in the Suit in question is that without serving him any Show Cause Notice and without giving him any opportunity of hearing, the President of the Arunachal Pradesh Congress Committee the petitionerNo.2/defendant No. 2, by his Order under reference No. APCC/EXP/21/2009 dated 02.04.2015 expelled/

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terminated him from the membership of the Indian national Congress Party for a period of 6 (six) years with immediate effect under the relevant Article XIX (f) (iv) under Sub-Clause (a) of Clause 4 of the Constitution of the INC Party allegedly on the ground of anti-party activities and against the said order of expulsion/termination, the opposite party/plaintiff on 10.04.2015 preferred an appeal under Rule 8 of the Disciplinary Rules of the Constitution of the said Party before the appellate authority, the Congress Working Committee, headed by its President, All India Congress Committee, New Delhi. Further, during pendency of his said appeal, the opposite party as plaintiff instituted the suit in question against the petitioners/defendants challenging his expulsion/termination order dated 02.04.2015 and for a declaration that he continues to remain as a member of the INC Party. Along with the suit the plaintiff also preferred an application for necessary injunction against the aforesaid order and action of the petitioners.

(35) Copies of the Complaint & Injunction Petition of the opposite party/plaintiff, Written Statement & Objection Petition of the defendants/petitioners and the relevant provisions of the Constitution of INC party including the Disciplinary Rules under Article XIX (f) (iv) are annexed with the present petition.

(36) Clause 4 of the said Article XIX (f) (iv) of the INC Party Constitution provides for breach of discipline that includes five (a to e) Sub-Clauses and the Sub-Clause (a) provides that – “deliberately acting or carrying on propaganda against the programmes and decisions of the Congress”.

(37) Clause 5 of the said Article XIX (f) (iv) provides for Notice & Clause 6 provides for Punishment. Sub-Clauses (a) & (b) of Clause 5 reads as follows:

“(a) No disciplinary action shall be taken without an opportunity being given, would at least 2 weeks’ notice to the Committee or individual concerned, to explain its or his/her case and answer such charges as are made against it

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or him/her. However, the Working Committee can reduce the period of notice when it deems fit to do so.

- (b) Notice can be issued at the instance of the President of the Committee, competent to take disciplinary action, provided that he feels there is a prima facie breach of discipline against the Committee or person concerned."

(38) From the annexures appended by the petitioners to the petition it is seen that on 25.03.2015 the Executive Committee Members of petitioner No.1, APCC unanimously resolved to issue a Show Cause Notice to the petitioner as per INC Constitution Article XIX (f) (iv) Sub-Clause 5(a) by reducing the period of notice to one week, instead of two weeks (Annexure-A of the WS of the petitioners). The petitioners have also annexed a copy of Show Cause Notice under Ref. No. APCC/SCN/22/2009 dated 26.03.2015 under signature of the petitioner/defendant No. 2 in the name of the petitioner which goes to show that the opposite party/plaintiff was directed to give his reply to the said Show Cause Notice, within 7 (seven) days of its receipt as to why disciplinary action should not be taken against him under Article XIX (f) (iv) of Clause 5 Sub-Clause (b) (Annexure-B of the WS of the petitioners). Thereafter, by the impugned order dated 02.04.2015, the petitioner No. 2 expelled the sole opposite party/plaintiff from the membership of the party concerned for a period of 6 (six) years.

(39) However, the petitioners/defendants neither annexed any document(s) in their written statement and objection petition before the trial Court nor in the present petition to show that the said Show Cause Notice dated 26.03.2015 was ever served on the opposite party/plaintiff and if at all the same was so served, when it was served and whether before expelling him from the party concerned by the impugned order dated 02.04.2015.

(40) The Constitution of the Petitioners' Party in question and the Disciplinary Rules incorporated in the said Constitution of the Party, based upon which, the petitioners/defendants have taken the impugned action

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against the opposite party/plaintiff provides for specific rule of notice before taking any punitive action against a committee or a member of the party only after giving them an opportunity, with at least two weeks' notice, which can also be reduced to one week, if the working committee of the party deems it fit, to explain their case and answer the charges leveled against them as the case may be.

(41) But in the present case though the petitioners/defendants sought to oust the jurisdiction of the Civil Court in the case in hand completely failed to establish its contention before the Court and also failed to show that such notice was ever served upon the opposite party/plaintiff giving him an opportunity to defend himself and explain before expelling/terminating him from the INC Party for a period of six years by the impugned order dated 02.04.2015. Since the Disciplinary Rules incorporated in the Constitution of the petitioners' Party provides for specific rules & conditions before taking any punitive action against a committee or a member of the Party in question and therefore, such condition should have been strictly complied with or must have been fulfilled by the petitioners/defendants before taking such punitive action against the opposite party/plaintiff. Moreover, the petitioners could not say about the procedure to be followed by the appellate authority in deciding the appeal of the opposite party and/or when such appeal is going to be disposed. Further, the petitioner also could not show from the Constitution of the Party in question debarring an aggrieved person in approaching an appropriate forum during pendency of an appeal against a punitive order passed under said Constitution of the petitioners' Party.

(42) Expulsion/termination of a member from the party and/or an association and/or an establishment deprives the aggrieved person from her/his legal right, that forms part of her/his status and from the above it can be seen that the opposite party/plaintiff's legal right has been interfered with and he has been denied such legal rights.

M. S. S. S.

(43) For the reasons stated above, this Court, is of the considered view that in the present case the Civil Court has the jurisdiction to examine whether – the decision and the action of the petitioners/defendants in taking the impugned punitive action dated 02.04.2015 against the sole opposite party/plaintiff expelling him from the INC Party for a period of six years and terminating his membership from the said Party was in good faith, was in conformity with the Constitution of the Party in question and the disciplinary rules incorporated therein, before taking such punitive action against the opposite party/plaintiff notice as required under Article XIX (f) (iv) 5 of the Constitution of the Party in question was served upon him or not and the established principles of law of natural justice was followed or not by giving the opposite party/plaintiff a chance of defence and explanation before said punitive action against him.

(44) From the facts and the circumstances of the case as stated above, the Court is of the opinion that the Civil Court, i.e. the Court of learned Civil Judge (Senior Division) Capital Complex, Yupia, rightfully and without any jurisdictional error has entertained the Title Suit No. 14 of 2015 of the opposite party/plaintiff, which is presently pending before learned Civil Judge (Junior Division) Capital Complex, Yupia. Further, the order dated 18.06.2015 passed by the learned Civil Judge (Junior Division) Capital Complex, Yupia in Misc (J) Case No. 51 of 2015 does not suffer from any error of jurisdiction or do not exhibit any perversity in approach or capricious exercise of the authority. The said Civil Court has the competent jurisdiction to try the said suit in question of the opposite party/plaintiff and this Court did not found any patent illegality or error in the procedure in taking cognizance of the said Title Suit No. 14/2015 and in passing the order dated 18.06.2015 in Misc (J) Case No. 51/2015. The facts of the case and the law laid down by the Hon'ble Supreme Court of India, discussed above, do not justify the exercise of the power under Article 227 of the Constitution of India in the present case, as prayed for by the petitioners.

M. A. H.

(45) Accordingly, this petition, being devoid of any merit, stands dismissed. No order as to costs.


JUDGE

Pb/-

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