

IN THE COURT OF THE MUNSIFF, KOCHI

Present :- Sri. Mithun Roy K., B.A., LL.B., Additional Munsiff

Tuesday, the 26th day of June, 2018/ 5th Ashada, 1940

I.A.No.1078/2018 in O.S.No.141/2018

Petitioners/Plaintiffs-

- 1 M.K. Raveendran, aged 74, S/o. Krishnan, Manezhath Nirmalyam, Edakochi Village, Kochi Taluk, Edakochi, Pin 682 010
- 2 V.S. Praveen Kumar, aged 38, S/o. Subramanian, Manezhath, Edakochi Village, Kochi Taluk, Edakochi, Pin 682 010
- 3 R Dayanand, aged 36, S/o. Raveendran, Manezhath Nirmalyam, Edakochi Village, Kochi Taluk, Edakochi, Pin 682 010

By Advs. K.V Sadananda Prabhu, V.S. Devadasan Pillai & K.M. Biju

Respondent/Defendant:-

Jnananodayam Sabha, Edakochi, Regd. No.ER159/1978, Edakochi, Edakochi Village, Kochi Taluk, Kochi- Pin 682 006, represented by its Secretary

By Advs. Suraj Krishna B.S. & Sreekala C. Sudhan

This petition is filed under Order 39 Rules 1 of the Civil Procedure Code to pass an order of injunction restraining the defendant from pursuing any action, pursuant to the decision of the General Body dtd. 24.12.2017 and conveyed to the plaintiffs by the notices dtd. 08.02.2018 and 12.03.2018 of the defendant.

This petition come up for hearing before me on 19.06 .2018 and the court on 26.06.2018, passed the following:-

ORDER

This is an order in a petition filed under Order XXXIX Rule 1 of C.P.C.

2. The petitioners' case in brief is as follows :- The petitioners are the plaintiffs and the respondent is the defendant in the above suit. The petitioners were members of the respondent *sabha*. The petitioners were expelled from the *sabha* in pursuant to the notices dated 08.02.2018 and 12.03.2018 issued by the respondent. The said action taken by the respondent is ultra vires to the provisions of the bye laws. Natural justice principle is also not complied by the respondent. The expulsion of the petitioners from the membership of the respondent has serious repercussions on the petitioners social relationship in the community. The petitioners lost the privileges and benefits envisaged under the bye law. There was no fair play in action and the decision making power was heavily loaded in the hands of a few. The decision itself was taken in a meeting with no quorum. Thus the prayer in the petition is to restrain the respondent from pursuing further action, pursuant to the decision of the General Body dated 24.12.2017 which was conveyed to the petitioners by the notices dated 08.02.2018 and 12.03.2018.

3. On issuance of urgent notice in the petition, the respondent appeared through counsel and filed counter affidavit contending *inter alia* as follows:- The respondent had acted only as per the provisions of the bye law. The membership of any person in the *sabha* is not an absolute right accrued by

birth or faith only. The eligibility for membership, refusal of membership and expulsion from membership are all matters governed by the bye law of the respondent/defendant. A person who is enjoying the benefits of the membership is bound by the provisions of the bye law in so far as his membership rights are concerned. No member can claim absolute right for the enjoyment of the membership benefits or immunity from disciplinary proceedings including expulsion. As per Clause 39(A) of the bye law, the Executive Committee of the respondent *sabha* is authorized to take disciplinary proceedings against any erring member including expelling of such member from the membership. Any member who has faced disciplinary proceedings taken by the Executive Committee can prefer Appeal against such decision before the general body. Without resorting to the redressal mechanism provided under the bye law, the petitioners cannot seek equitable remedy of injunction against the respondent *sabha*. As per Clause 11(C) of the Bye law, when litigation is pending between any member of the Sabha and the Sabha, all the membership benefits of such member and his family members shall remain suspended during the pendency of the litigation. Clause 11(D) of the bye law states that the restoration of the membership and its consequential rights can be decided by the general body after the final verdict of the court in the litigation. On 05.09.2017 and 6.12.2017, two notices were issued to Sri.M.V.Chellappan who was the Chairman of Bhrahma Sree Nishkalananda Swamy Anusmarana Committee. To the notices given to the petitioners, the 1st petitioner gave a reply on

15.12.2017. The said reply was not satisfactory. Nothing was done by the petitioners to efficaciously address the issues raised by the *sabha* in its notices issued to them. Accordingly, the General Body of the *sabha* decided to provide one more opportunity to the petitioners to comply with the *sabha*'s legitimate demands. The respondent again gave one month's time to the petitioners from 08.02.2018 to comply the *sabha*'s demand. Even thereafter the petitioners had not done so. To the letter dated 08.02.2018, the petitioners issued a reply showing their unwillingness to comply the demand made by the General Body. Thus they issued the letter dated 12.03.2018 intimating the petitioners regarding the executive committee's decision to expel them from the membership of the *sabha* as per the directives of the general body. Hence the petitioners have no right to seek any order of injunction restraining the respondent *sabha* from taking any action in pursuant to the general body decision dated 24.1.2017, which was implemented through decisions of the Executive Committee on 08.02.2018 and on 12.03.2018. Thus the respondent had prayed for the dismissal of the petition with costs.

4. As part of enquiry, the documents produced by the petitioners are marked as Exts.A1 to A13 for reference. No document was produced by the respondent.

5. Heard both sides.

6. Points raised for determination are as follows:

(i) Whether the petitioners have made out a *prima facie* case?

(ii) Whether the balance of convenience is in favour of

the petitioners?

(iii) Whether any irreparable injury will be caused to the petitioners, if no injunction as prayed for is granted?

(iv) What is the appropriate order to be passed ?

7. Points Nos. (i) to (iv):- These points are considered together as they are inter related. The petitioners are strongly challenging their expulsion from the respondent *sahba* in pursuance to the decision of the general body dated 24.12.2018 of the respondent, which was conveyed to the petitioners as per the notices dated 08.02.2018 and 12.03.2018.

8. In this petition, the petitioners want to restrain the respondent from pursuing further action, pursuant to the said decision of the General Body, which was conveyed to the petitioners by the notices referred to in Exts. A11 to A13

9. The first contention of the petitioners is that the decision taken by the respondent to expel them from the membership is ultra vires to the provisions of Ext.A1 bye law. According to the petitioners, their expulsion from the membership of the respondent is having serious repercussions on their social relationship in the community and had infringed their genuine privileges and benefits guaranteed under the various provisions of Ext.A1 bye law. Secondly, the petitioners contend that the impugned decision was taken by the respondent without abiding the natural justice principle. Thirdly, the petitioners contend that the impugned decision of the respondent was taken in a meeting having no sufficient quorum.

10. *Per contra*, the learned counsel for the respondent

contended that no birth right is given to the petitioners against the respondent *sabha* to claim the privileges enshrined in Ext.A1 bye law. According to the respondent, actions taken against the petitioners were due to the willful disobedience on their part to comply the directions of the committee in spite of giving repeated chances. The respondent further claims that the proceedings initiated against the petitioners were strictly as per norms.

11. The learned counsel for the petitioners submitted that the entire problem began by the issuance of Ext.A4 brochure by the petitioners. Ext.A4 brochure is published by the *Manezhath* family for convening a meeting to commemorate one *Brahma Sree Nishkalananda Swamikal* and to offer *Smrithi Mandampam* on 10.09.2017 at the courtyard of the 1st petitioner's house.

12. According to the respondent, Ext.A4 contains objectionable statements to the line that *BrahmaSree Nishkalanada Swamikal @ Appapiswamikal* is the founder of the temple of the respondent *sabha*. In this regard, the learned counsel for the petitioners submitted that the statements contained in Ext.A4 are believed to be true by the petitioners. Ext.A6 statement issued on behalf of the petitioners' committee in response to Ext.A5 notice of the *sabha* is relied by the petitioners to say that the things stated in Ext.A4 are their opinion only.

13. The learned counsel for the respondent further contended that even after the issuance of Ext.A6 statement, the petitioners continued to make offending statements to twist the history of the *sahbha*. Thus the respondent issued Ext.A7

letter calling upon the 1st petitioner to remove the wrong entry regarding the founder of *sabha* made in the writing on the statue of the *Swamikal* placed by the committee. In response, the 1st petitioner issued Ext.A8 reply by justifying the actions in this regard taken by the committee. Then the respondent preferred to issue Ext.A9 letter to the 1st petitioner asking them to comply the demand made by the *sabha* in Ext.A7 letter within 7 days from the receipt of Ext.A9 letter. It was further intimated by the respondent in Ext.A9 letter that the failure to comply the direction therein will result in taking stringent actions against the petitioners without any further notice. Later Exts. A.11 to A.13 notices were issued to the petitioners intimating the decision of the *sabha* to remove them from the preliminary membership of the *sabha*.

14. There is no case for the petitioners that they have complied the demand made by the respondent in Ext.A9 letter. The 1st petitioner had issued Ext.A10 letter disputing the strength of the quorum required in the general meeting of the respondent to take a decision against the petitioners. At this stage, it is not possible to determine the correctness of the statements made by the parties to the *lis* pertaining to the history and formation of *sabha* and its allied institutions. The limited task at this juncture is to see whether the expulsion of the petitioners was in violation of the norms in Ext.A1 or against natural justice principle.

15. The learned counsel for the petitioners had pointed out various benefits for the members provided under Clauses 31,32,

34 and 35 of Ext.A1 bye law. It is to be noted that, Clause 8 in Ext.A1 relates to the induction of members on payment of requisite fees. It is also clear from the reading of Clause 8 in Ext.A1 that, even the members of other communities can join the *Sabha* as per the norms contained in Ext.A1 bye law. Further there is provision under Clause 11 in Ext.A1 to disqualify the members from the *sabha*. Likewise, Clause 39 in Ext.A1 contains provision to initiate disciplinary proceedings against the members. That being so, it cannot be said that the petitioners are having unfettered rights acquired by birth to enjoy the privileges mentioned in Ext.A1 bye law.

16. The learned counsel for the respondent had pointed out Clauses 11(c) and 11(d) of Ext.A1 to submit that, if any person files case against the *sabha*, such person and his family members will not be entitled to claim any benefits from the *sabha*. In that event, the membership and other rights of such person can be restored in general body meeting after the final determination of the case by the court. At this stage, the learned counsel for the petitioners submitted that the impediment in Clause 11(c) of Ext.A1 for the members to file case against the *sabha* is against public policy and is unsustainable. In this case, the legality of Clauses 11(c) and 11(d) of Ext.A1 is not under challenge. So the contention of the learned counsel for the petitioners that the impediment created by Clauses 11(c) of Ext.A1 has to be ignored cannot be accepted. In this case, the membership of the petitioners were cancelled prior to the institution of the case. Hence there is no scope for attracting the bar under Clauses 11(c) of Ext.A1.

17. It is clear from the reading of Clause 39(a) in Ext.A1 that, the *sabha* committee has ample power to initiate disciplinary proceedings against any member for disobeying the decision of the committee or the decision of the general body. It is further clarified in clause 39(a) in Ext.A1 that any member who has to face the said disciplinary proceedings can challenge the same in appeal before the general body. Though the learned counsel for the petitioners had submitted that no such decision was taken in the committee, it is clearly narrated in the petition that the decision to expel the petitioners was taken in a meeting with no quorum. In Ext.A10 letter issued by the 1st petitioner, the allegation is that the meeting was convened without sufficient strength in the quorum. So it cannot be said that there was no decision in the committee of the respondent *yogam*. If the petitioners dispute the quorum required for taking the decision to expel the petitioners; such disciplinary action taken by the respondent could have been challenged in appeal as provided under Clause 39(a) in Ext.A1. Exts.A11 to A13 clearly reflect the decision of the respondent to expel the petitioners from the membership as part of disciplinary proceedings. The petitioners had not filed any appeal against the issuance of Exts.A11 to A13 as well. So without exhausting the efficacious remedy of appeal provided under Clause 39(a) in Ext.A1, there is bar to entertain the prayer for injunction by virtue of Section 41 (h) of the Specific Relief Act. As per Section 41 (h) of the Specific Relief Act, no injunction can be granted when an equally efficacious relief can certainly be obtained by other

usual mode of proceeding except in case of breach of trust. Thus the petitioners are not justified in filing this petition for injunction along with the suit by disputing the propriety of the decision taken by the respondent to expel the petitioners.

18. Exts.A7 and A9 letters issued by the respondent *Sabha* clearly explained their stand to the petitioners. So in view of the said letters issued by the respondent, the contention of the petitioners that the decision to expel them from the membership was without hearing their side cannot be accepted. Hence there is no violation of natural justice principle in the case.

19. From the above mentioned findings, it is clear that the actions taken against the petitioners by the respondent were in accordance with the provisions under Ext.A1 bye law after complying the natural justice principle of being heard. Thus the petitioners have not made out a *prima facie* case. The balance of convenience is also not in favour of the petitioners.

20. It is to be noted that the petitioners are no longer the members of the respondent. Exts.A11 to A13 notices were issued to the petitioners intimating the decision of the *sabha* to remove them from its preliminary membership. So it is clear that no other step is remaining in pursuant to the decision of the respondent to expel the petitioners. If at all any step is remaining, the petitioners should have explained the same. But the petitioners have not explained the further action remaining in pursuant to the decision of the General Body. So

there is no existing circumstance in order of grant an order of injunction as sought for in the petition. Hence no irreparable injury will be caused to the petitioners, if no order of injunction is granted. That being so, the petitioners are not entitled for a relief in this petition. So the petition has to be dismissed.

In the result,

The petition is dismissed. No costs.

(Typed, corrected and pronounced by me in open court on this 26th day of June 2018.)

Mithun Roy.K
Additional Munsiff.

APPENDIX :-

Petitioner's Exhibits:-

A1	-	Bye laws of the defendant
A2	-	Astrological prediction and findings/suggestions
A3	-	Smaranika published in the year 1991-92
A4	21.08.17	Brochure published by Manezhath family
A5	05.09.17	Notice issued by the defendant to the 1 st plaintiff
A6	-	Public statement
A7	06.12.17	Letter
A8	14.12.17	Reply
A9	08.02.18	Letter
A10	12.02.18	Letter
A11	12.02.18	Notice
A12	12.02.18	Notice
A13	12.10.18	Notice

Respondent's Exhibits:- Nil

Petitioner's Witness :- Nil

Respondent's Witness:- Nil

Court's Exhibits:- Nil

Additional Munsiff.

jjk
compd by:

**I.A.No.1078/2018 in
O.S.No.141/2018
Order dtd. 26.06.2018**