

Dr. Justice Ferdino I. Rebello

Chief Justice, High Court of Allahabad (Retd)
Judge, High Court of Bombay (Retd)
Senior Advocate, High Court of Bombay

The Salsette Catholic Co-op. Hsg. Soc. Ltd.

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QUERIST : The Salsette Catholic Cooperative Housing Society Ltd.

1. The Querist seeks opinion on the following queries:-

Query No. 1: *Whether a Review Application is maintainable under Order XLVII Rule 1 of the Code of Civil Procedure in the light of discovery of the fact that on 7TH February 1993 the General Body rectified the resolution extending the term of the Managing Committee from one year to two years to bring it in conformity with the term of the President of **one year** and not vice versa, which was not within the knowledge of the Appellants at the time the order in Appeal was passed on 5/6/2023?*

Query No. 2: *Whether a Review Application is maintainable under Order XLVII Rule 1 of the Code of Civil Procedure against an order passed in the Appeal from Order under Order XLIII Rule 1(r) of the Code of Civil Procedure?*

Query No. 3: *Whether in the light of the observation of the Hon'ble High Court in paragraph 29 of the order passed in Appeal on 5/6/2023 is tantamount to altering Rule 33 of the Rules & Regulations of The Bandra Gymkhana which can never be altered?*

Query No. 4: *Whether the observations of the Hon'ble High Court in the Order dated 5/6/2023 which are in fact interpretations of Rule 21 & Rule 33 of the Rules & Regulations of The Bandra Gymkhana render the suit infructuous despite the clarification in 31(ii) of the Order?*

BACKGROUND FACTS

2. The Queries arise from the elections to the Managing Committee held in the year 2021. The Querist had filed a suit in the City Civil Court at Borivli. An Application for Interim Relief was also sought against Defendant No.5 in the Suit who subsequent to the Suit was elected as the President of the Bandra Gymkhana. The Querist is a member of the Bandra Gymkhana. The Interim Relief as amended was rejected by the City Civil Court. An Appeal preferred to the High Court has also been dismissed. The Querist intends to file a Review Application against the Order of the High Court and/or an SLP.

3. In terms of Query No.1, it is the case of the Querist that they have discovered new material which was not to their knowledge, but was within the knowledge of Defendant No.1. Those documents were not disclosed by Defendant No.1 or the other Defendants. These documents have come to the knowledge of the Querist recently, including Resolution of 7th February 1993. It is in this background that the Queries will have to be answered.

4. The cause of action for the Plaintiffs to file the suit was that Defendant No.5 was an ordinary member and not life member when she contested the elections for the President and was as such not eligible in view of Rule/Bye-Law 18(a). The 2nd aspect was that the term of the President under Bye-Law 21 was annual and not for a period of two years.

5. To answer the Queries, the following bye-laws will have to be considered.

"21. The first President of the Gymkhana shall be Dr. Sir. Dominic A. D'Monte. He shall hold office for life or for so long as he may be willing so to act. Presidents shall otherwise be elected in the following manner annually.

At the meeting at which the Managing Committee nominates 6 members for election to the new Managing Committee fit shall also nominate 3 members from among the Founders, Patrons, Benefactors, Donors, and Life Members, if available, for the office of the President. The Honorary General Secretary shall forward a list of these 3 names to all members of the Gymkhana other than Associate, Casual, Honorary or Dependent Members for election of one of these as President. A date shall be fixed on which this list shall be returned. At the next meeting of the Managing Committee this list shall be

scrutinized and the Managing Committee shall declare the name of the President so elected.

The President shall preside ex-officio at all meetings of the Managing Committee and at all General Meetings. In his absence the meeting shall elect its own Chairman.

Associate, Honorary, Dependent or Casual Members are not eligible for this office."

"33.. Notwithstanding anything to the contrary hereinbefore contained, the following rules shall never be altered:-

Rules Nos. 2, 3, 4, 9, 15 a, b & e, 18 b, 21, and 29 b, and this rule.

No other rule shall be altered, varied or added to unless the resolution to alter, vary or add to such rule is passed at a general Meeting of the Gymkhana by a majority of 2/3rds of the members present and entitled to vote thereat: seven days' previous notice of such resolution shall be given to the Honorary General Secretary provided that no such alternation, variation or addition shall be inconsistent with the rules that cannot be altered."

"Query No. 1: Whether a Review Application is maintainable under Order XLVII Rule 1 of the Code of Civil Procedure in the light of discovery of the fact

that on 7TH February 1993 the General Body rectified the resolution extending the term of the Managing Committee from one year to two years to bring it in conformity with the term of the President of **one year** and not vice versa, which was not within the knowledge of the Appellants at the time the order in Appeal was passed on 5/6/2023?"

6. Order 47 of the CPC provides for a review. One of the grounds for review is the discovery of new material which was not to the knowledge of the party filing the review or in the ordinary course and/or due diligence could not have been discovered. There are two documents placed for my consideration. The 1st document is the Minutes of the 58th Annual Report held on 2nd October 1994. At Item No.5 was Resolution No.1. By this Resolution, it was proposed to increase the strength of the Managing Committee from six members as provided in the Bye-Laws to 10 members. This Resolution was opposed. One of the opponents was Mr. Ajit Rodrigues, one of the Defendants in the suit. The major objection was that considering Bye-Law 33, no amendments could be made to Bye-Laws 18 and 21. This objection was upheld by the Chair and the Resolution was not put to vote. The second Resolution (I have yet to see, but my opinion is based on the note) is that the term of the Managing Committee which had been increased to two years was restored to one year. This would indicate that the term of the Managing Committee and independently of the President could not be more than one year. Even though the Querist may be represented on the Managing Committee, it cannot be ruled out that in the ordinary course and as these Resolutions were nearly 20 years old, they

ordinarily would not be within the knowledge of the Querist. A review therefore on this ground would be maintainable.

It may be mentioned here that ordinarily courts including High Courts normally do not review their orders unless the error is apparent. The idea behind filing the Review would be to bring the additional documents referred to above on record. This would help in the event the Querist seeks to file an SLP before the Supreme Court.

7. Query No.1 answered accordingly.

"Query No. 2: Whether a Review Application is maintainable under Order XLVII Rule 1 of the Code of Civil Procedure against an order passed in the Appeal from Order under Order XLIII Rule 1(r) of the Code of Civil Procedure?"

8. The review sought to be filed arises from interim/miscellaneous proceedings in the suit. Therefore, the provisions for review which apply to the final judgment also apply to interim orders in terms of Section 141 of the provisions of the CPC. A Review therefore would lie and/or be competent.

"Query No. 3: Whether in the light of the observation of the Hon'ble High Court in paragraph 29 of the order passed in Appeal on 5/6/2023 is tantamount to altering Rule 33 of the Rules & Regulations of The Bandra Gymkhana which can never be altered?"

9. A civil court cannot amend the bye-laws (rules and regulations). The power to amend lies in the General Body of the Bandra Gymkhana. The observations by the court are only a prima facie interpretation at an interim

stage. The High Court has erroneously interpreted or not considered in the proper perspective Bye-Laws 18(a), 21 and 33. This does not amount to an amendment of the Bye-Laws. Query No.3 answered accordingly.

"Query No. 4: Whether the observations of the Hon'ble High Court in the Order dated 5/6/2023 which are in fact interpretations of Rule 21 & Rule 33 of the Rules & Regulations of The Bandra Gymkhana render the suit infructuous despite the clarification in 31(ii) of the Order?"

10. A prima facie finding at an interim stage cannot result in the suit being infructuous, if otherwise there is a cause of action. In the instant case, in my opinion, Defendant No.5 could not have been elected as President nor her term could be of two years. In terms of Bye-Laws quoted above, the term could be annual, i.e. one year. In my opinion therefore, a declaration to declare that the election of Defendant No.5 was illegal and consequently null and void and a further declaration that Defendant No.5 could not have held the post of President for more than one year would be maintainable even if the term comes to an end during the pendency of the suit. Query No.4 answered accordingly.

DR. JUSTICE FERDINO I. REBELLO

CHAIRMAN

SECRETARY

MANAGER 21.03/07/2023