

RAJESH D. DARBAR AND ORS. A
v.
NARASINGRAO KRISHNAJI KULKARNI AND ORS.

AUGUST 6, 2003

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.] B

Bombay Public Trust Act, 1950—Section 72(4)—Hindu Religious Institutions and Charitable Endowments Act, 1997—Dispute regarding inductment of certain persons in electoral roll of a society—Election held in 1996—Term of the Committee already over—Whether due to lapse of time validity of election of 1996 become non-est and whether the names were legally inducted—Application for adducing additional evidence before Charity Commissioner not pressed—High Court held the inductment of names as legal and that not dealing with additional evidence by Charity Commissioner caused prejudice—Held: Prejudice not caused as the application itself was not pressed—The case remanded to Appellate Authority to decide the eligibility of the persons. C D

Subsequent event—Moulding of relief—Permissibility of—Held: The Courts can take notice of the subsequent events and can mould the relief if the relief originally sought becomes obsolete and new relief is more efficacious in view of subsequent events—But the party claiming the relief must have the same right from which either the first or the modified remedy may flow—Amendment may also be permitted where cause of action is deficient but made up by later events, in order to avoid multiplicity of litigation provided no prejudice is caused to the other side—But if the statute inhibits such change, it is not permissible. E F

Maxims:

Actus curiae neminem gravabit; Lex non cogit ad, impossibilia—Meaning of. G

In a society registered under Societies Registration Act, 1860 and under Bombay Public Trust Act, 1950, electoral rolls for the election were prepared for election of the Managing Committee. Appellants claimed that the names of 38 persons, included in the roll, were not eligible to H

A participate in the election. The election was held in October, 1996. Term of the Committee expired. After the decision of Additional District Judge, the same was challenged by way of appeal under Section 72(4) of Bombay Public Trust Act, 1950. High Court concluded that the 38 persons were legally inducted as members; and that since the applications filed by respondents 1 to 12 for adducing additional evidence before Charity Commissioner were not dealt with, caused prejudice to the case of respondents.

C In appeal to this Court, appellant contended that High Court lost sight of the fact that by passage of time the dispute as regards the validity of the election in October, 1996 became non-est; that the 38 persons were not legally inducted as members; and that applications filed by the respondents for adducing additional evidence before Charity Commissioner were not pressed by the applicants and hence the question of not dealing with the application did not arise. Bombay Public Trust Act, 1950 was later repealed by the Hindu Religious Institutions and Charitable Endowments Act, 1997.

Disposing of the appeals, the Court

E HELD: 1.1. The Courts can take notice of the subsequent events and can mould the relief accordingly. But there is a rider to these well established principles. This equitable principle cannot, however, stand in the way of the court adjudicating the rights already vested by a statute. Courts of justice may, when the compelling equities of a case oblige them, shape reliefs - cannot deny rights - to make them justly relevant in the updated circumstances. Where the relief is discretionary, Courts may exercise this jurisdiction to avoid injustice. Likewise, where the right to the remedy depends, under the statute itself, on the presence or absence of certain basic facts at the time the relief is to be ultimately granted, the Court, even in appeal, can take note of such supervening facts with fundamental impact. [279-A, B; 278-B, C, D]

G *P. Venkateswarlu v. The Motor and General Traders*, AIR (1975) SC 1409, referred to.

H 1.2. Where the nature of the relief, as originally sought, has become obsolete or unworkable or a new form of relief will be more efficacious on account of developments subsequent to the suit or even during the appellate stage, it is but fair that the relief is moulded, varied or reshaped

in the light of updated facts. The party claiming the relief or change of relief must have the same right from which either the first or the modified remedy may flow. Subsequent events in the course of the case cannot be constitutive of substantive rights enforceable in that very litigation except in a narrow category but may influence the equitable jurisdiction to mould reliefs. Conversely, where rights have already vested in a party, they cannot be nullified or negated by subsequent events save where there is a change in the law and it is made applicable at any stage.

[277-G, H; 278-A, B]

Lachmeshwar Prasad v. Keshwar Lal, (1940) FCR 84 and *Patterson v. State of Alabama*, (1934) 294 U.S. 600, referred to.

1.3. Where a cause of action is deficient but later events have made up the deficiency, the Court may, in order to avoid multiplicity of the litigation, permit amendment and continue the proceeding, provided no prejudice is caused to the other side. All these are done only in exceptional situations and just cannot be done if the statute, on which the legal proceeding is based, inhibits, by its scheme or otherwise, such change in cause of action or relief. The primary concern of the Court is to implement the justice of the legislation. Rights vested by virtue of statute cannot be divested by this equitable doctrine. [279-D, E]

V.P.R.V. Chokalingam Chetty v. Seethai Ache and Ors., AIR (1927) PC 252; *Ramji Lal v. State of Punjab*, ILR (1966) 2 Punj : 125 and *Rameshwar and Ors. v. Jot Ram and Ors.*, AIR (1976) SC 49, referred to.

2. A party cannot be made to suffer on account of an act of the Court. There is a well recognized maxim of equity, namely, *actus curiae neminem gravabit* which means an act of the Court shall prejudice no man. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other maxim is, *lex non cogit ad impossibilia*, i.e. the law does not compel a man to do that what he cannot possibly perform. [279-C, D]

Raj Kumar Dey and Ors. v. Tarapada Dey and Ors., [1987] 4 SCC 398; *Gursharan Singh v. New Delhi Municipal Committees*, [1996] 2 SCC 459 and *Mohammed Gazi v. State of M.P. and Ors.*, [2000] 4 SCC 342, relied on.

3. The application presented by Respondent Nos.1 to 12 before Charity Commissioner was not pressed. That being the position, the

A question of Charity Commissioner passing any order on that application did not arise. On this score alone, judgment of the High Court is indefensible. [279-F, G]

B 4. As the basic issue revolves around the question of the legality of membership and the eligibility of 38 persons to participate in the election held in the year 1996, let the election be held for the Committee under the directions and supervision of the Appellate Authority provided under the Hindu Religious Institutions and Charitable Endowments Act, 1997. Before issuing directions for holding election, the said authority shall decide about the eligibility of the 38 persons by deciding whether the names of the concerned 38 persons were rightly included in the electoral rolls prepared by respondents 1 to 12 for election of members to the Committee which was held in October, 1996. Parties shall be permitted to place all such materials on which they place reliance to justify their respective claims and stands. [280-B-D]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5568-5570 of 2003.

From the Judgment and Order dated 1.4.2003 of the Karnataka High Court in M.F.A. Nos. 7254, 7255 and 7340 of 2002.

E WITH
C.P.(C) Nos. 245-247 and 282-284 of 2003.

P. Chidambaram and R.F. Nariman, S.N. Bhat, N.P.S. Panwar, D.P. Chaturvedi and Rishiraj Barooah for the Appellants/Petitioners.

F L. Nageshwar Rao and Girish Ananthamurthy for P.P. Singh for the Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Leave granted.

G These appeals are directed against the common judgment of the High Court of Karnataka at Bangalore. The three appeals which disposed of by the judgment were preferred under Section 72(4) of the Bombay Public Trusts Act 1950 (for short the Act) wherein challenge was to the common judgment and order dated 12.11.2002 passed in Civil Miscellaneous Nos. 60-62/2000

H on the file of the Court of the Second Additional District Judge, Bijapur. The

dispute relates to the elections claimed to have been conducted by two rival groups for the Managing Committee of the Vidya Vardhak Sangh, Bijapur, which is a society registered under the Societies Registration Act, 1860 (in short the 'Societies Act'). It is also a registered body under the provisions of the Act. The dispute arose because names of 38 persons were included in the electoral rolls for the election. While the appellants claim that the 38 persons whose names are included in the electoral roll were not eligible to participate in the process of election, the other group, that is, respondents 1 to 12 contested the claim. Initially after the election, the elected Committee started functioning in October 1996, as the date of election was 6.10.1996. There is no dispute that subsequent committees have been elected as the term of office is 3 years. But the basic dispute about the eligibility of the 38 persons still continues to haunt the Society. We need not go into the various disputes both factual and legal in detail. Two points have been urged by learned counsel for the appellants. They pointed out that the High Court lost sight of the fact that by passage of time the dispute as regards the validity of the election in October 1996 became non est. Secondly, the High Court erroneously came to the conclusion that the 38 persons were legally inducted as members. Such conclusion was arrived at by proceeding on erroneous premises. The High Court committed a faux pas by holding that the application filed by the respondents 1 to 12 for adducing additional evidence was not dealt with by the Charity Commissioner thereby prejudicing case of the respondents. It was pointed out by the appellant that the application was not pressed by the applicants and it is not as if the Charity Commissioner had not dealt with the application in the proper perspective.

Per contra, the learned counsel for the respondents 1 to 12 submitted that the dispute did not become infructuous by passage of time as these basic issues regarding eligibility remained. Further, the materials relied upon by the High Court to conclude that 38 persons were legally inducted as members cannot be faulted because of the materials considered by the High Court.

The impact of subsequent happenings may now be spelt out. First, its bearing on the right of action, second, on the nature of the relief and third, on its importance to create or destroy substantive rights. Where the nature of the relief, as originally sought, has become obsolete or unserviceable or a new form of relief will be more efficacious on account of developments subsequent to the suit or even during the appellate stage, it is but fair that the relief is moulded, varied or reshaped in the light of updated facts. *Patterson v. State of Alabama*, (1934) 294 U.S.600, 607, illustrates this position. It is

- A important that the party claiming the relief or change of relief must have the same right from which either the first or the modified remedy may flow. Subsequent events in the course of the case cannot be constitutive of substantive rights enforceable in that very litigation except in a narrow category (later spelt out) but may influence the equitable jurisdiction to mould reliefs.
- B Conversely, where rights have already vested in a party, they cannot be nullified or negated by subsequent events save where there is a change in the law and it is made applicable at any stage. *Lachmeshwar Prasad v. Keshwar Lal*, (1940 FCR 84 = AIR 1941 FC 5) falls in this category. Courts of justice may, when the compelling equities of a case oblige them, shape reliefs - cannot deny rights - to make them justly relevant in the updated circumstances.
- C Where the relief is discretionary, Courts may exercise this jurisdiction to avoid injustice. Likewise, where the right to the remedy depends, under the statute itself, on the presence or absence of certain basic facts at the time the relief is to be ultimately granted, the Court, even in appeal, can take note of such supervening facts with fundamental impact. This Court's judgment in *P. Venkateswarlu v. The Motor & General Traders*, AIR (1975) SC 1409 read in its statutory setting, falls in this category. Where a cause of action is deficient but later events have made up the deficiency, the Court may, in order to avoid multiplicity of the litigation, permit amendment and continue the proceeding, provided no prejudice is caused to the other side. All these are done only in exceptional situations and just cannot be done if the statute, on which the legal proceeding is based, inhibits, by its scheme or otherwise, such change in cause of action or relief. The primary concern of the Court is to implement the justice of the legislation. Rights vested by virtue of statute cannot be divested by this equitable doctrine (See *V.P.R.V. Chokalingam Chetty v. Seethai Ache and Ors.*, AIR (1927) PC 252).

F The law stated in *Ramji Lal v. State of Punjab*, ILR (1966), 2 Punj 125] = AIR (1966) Punj; 374 (F.B) is sound:

- G "Courts do very often take notice of events that happen subsequent to the filing of suits and at times even those that have occurred during the appellate stage and permit pleadings to be amended for including a prayer for relief on the basis of such events but this is ordinarily done to avoid multiplicity of the proceedings or when the original relief claimed has, by reason of change in the circumstances, become inappropriate and not when the plaintiff's suit would be wholly displaced by the proposed amendment (see *Steward v. The North Metropolitan Tramways Company*, (1885) 16 QBD 178 and a fresh
- H

suit by him would be so barred by limitation.”

These aspects were highlighted by this Court in *Rameshwar and Ors. v. Jot Ram and Ors.*, AIR (1976) SC 49. The courts can take notice of the subsequent events and can mould the relief accordingly. But there is a rider to these well established principles. This can be done only in exceptional circumstances, some of which have been highlighted above. This equitable principle cannot, however, stand on the way of the court adjudicating the rights already vested by a statute. This well settled position need not detain us, when the second point urged by the appellants is focussed. There can be no quarrel with the proposition as noted by the High Court that a party cannot be made to suffer on account of an act of the Court. There is a well recognised maxim of equity, namely, *actus curiae neminem gravabit* which means an act of the Court shall prejudice no man. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other maxim is, *lex non cogit ad impossibilia*, i.e. the law does not compel a man to do that what he cannot possibly perform. The applicability of the abovesaid maxims has been approved by this Court in *Raj Kumar Dey and Ors. v. Tarapada Dey and Ors.*, [1987] 4 SCC 398, *Gursharan Singh v. New Delhi Municipal Committees*, [1996] 2 SCC 459 and *Mohammed Gazi v. State of M.P. and Ors.*, [2000] 4 SCC 342.

On facts where the High court has slipped into error is by observing that the Charity Commissioner committed mistake by ignoring the documents which the respondents 1 to 12 wanted to produce and for which purpose an application was filed. The High Court observed that though necessary application to file additional evidence was filed before the Charity Commissioner, unfortunately the Charity Commissioner did not pass any order on that application and this lapse of the Charity Commissioner would result injustice to the parties. Undisputedly, the aforesaid application was not pressed before the Charity Commissioner. That being the position, the question of the Charity Commissioner passing any order on that application did not arise. The High Court has relied upon the documents which the respondents 1 to 12 wanted to produce as additional evidence before the Charity Commissioner. It was not as if the Charity Commissioner had ignored these documents by not passing any order on the application filed. On the contrary as noted above, the application itself was not pressed. On this score alone, judgment of the High Court is indefensible.

Several courses are open in view of the aforesaid finding. But we feel

- A** it would be appropriate, taking note of the passage of time and the nature of the dispute revolving around the question whether 38 persons were rightly included in the electoral rolls, if the matter is heard by the prescribed Appellate Authority. It is submitted by learned counsel for the parties that by the Hindu Religious Institutions and Charitable Endowments Act 1997, Karnataka Act No.33 of 2001 (hereinafter referred as Endowments Act), the Bombay Public Trusts Act 1950 has been repealed.
- B**

- As the basic issue revolves around as noted supra on the question of the legality of their membership and the eligibility of 38 persons to participate in the election held in the year 1996, let the election be held for the Committee under the directions and supervision of the Appellate Authority provided under the Endowments Act. Before issuing directions for holding election, the said authority shall decide about the eligibility of the 38 persons by deciding whether the names of the concerned 38 persons were rightly included in the electoral rolls prepared by the respondents 1 to 12 for election of members to the Committee which was held on 6.10.1996. Parties shall be permitted to place all such materials on which they place reliance to justify their respective claims and stands. We make it clear we have not expressed any opinion on the said question. The appeals are disposed of accordingly leaving the parties to bear their respective costs.
- C**
- D**

- E** Contempt Petition (C) Nos. 245-247/2003 and 282-284/2003

No orders are necessary to be passed in these petitions in view of our judgment delivered today in SLP(C) Nos. 6441-6443/2003.

K.K.T.

Appeals disposed of.

F