

M. SUDAKAR

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v.

V. MANOHARAN & ORS.

(Civil Appeal No. 10319 of 2010)

DECEMBER 7, 2010

[HARJIT SINGH BEDI AND CHANDRAMAULI KR.
PRASAD, JJ.]

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Trusts:

Resolution of the General Body debarring the President of the Trust from holding any office for 10 years – HELD: The Bye-laws only provide for removal from the membership on certain grounds, in accordance with the procedure prescribed therein; they do not provide for debarring any member from holding a post for specified period – Power to remove would not include the power to debar a member from holding an office of the Trust – Single Judge of the High Court did not err in quashing the resolution.

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Constitution of India, 1950:

Article 226 – Writ petition – Power of High Court to mould relief – Prayer in writ petition to restrain the respondents from registering the resolution by which the writ petitioner was debarred from holding any office of the Trust for ten years – Resolution already registered before filing of writ petition – Single Judge while holding the writ petition as infructuous, held the resolution as illegal and the writ petitioner entitled to continue as the member – HELD: Power to mould relief is always available to the court possessed with power to issue high prerogative writs – In the instant case, the resolution was to operate for a further period, therefore, the relief claimed by the writ petitioner cannot be said to have become infructuous and the Single Judge was right in moulding the relief.

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Article 226 – Writ petition – Delay in filing of – HELD: Delay and laches do not bar the jurisdiction of the court – It

- A *is a matter of discretion and not jurisdiction – Single Judge of the High Court took note of relevant facts and rightly declined to dismiss the writ petition on the ground of delay and laches.*

- B The appellant, who was the President of a Trust, and was, by a resolution dated 7.1.2007 passed by the General Body, debarred from holding any post in the Trust for a period of 10 years, filed a writ petition before the High Court with a prayer to restrain the respondents from registering the said resolution. However, since the resolution had been registered before filing of the writ
C petition, the Single Judge observed that the prayer had become infructuous, but held that debarring the writ petitioner for a period of 10 years was patently illegal and that the resolution would not have any legal sanction and the writ petitioner would continue to be the member of
D the Trust. On appeal by the respondents, the Division Bench of the High Court dismissed the writ petition, *inter alia*, on the ground of delay and also held that the Single Judge having held the writ petition as infructuous ought not to have moulded the relief. Aggrieved, the writ
E petitioner filed the instant appeal.

Allowing the appeal, the Court

HELD:

- F 1.1 The Division Bench of the High Court erred in setting aside the order of the Single Judge. Admittedly, the bye-laws which govern the Trust, do not provide for debarring any member of the Trust from holding a post for specified period. The bye-laws provide for removal of the membership in accordance with the procedure
G prescribed therein in case a member is found to be indulging in activities prejudicial to the Trust. The power to remove the member shall not include power to debar the member from holding an office of the Trust. The act of the appellant in removing a large number of members
H and financial impropriety will not clothe the General Body

to pass resolution debarring the appellant from holding the post for 10 years, as no such power is conferred by the bye-laws. The Single Judge did not err in quashing the resolution. Further, delay/latches does not bar the jurisdiction of the court; it is a matter of discretion and not of jurisdiction. The Single Judge had taken note of the relevant facts and rightly declined to dismiss the writ petition on the ground of delay and latches. [para 9-10] [1016-G-H; 1017-A-B-D; 1018-A-B]

State of Haryana and others v. Krishna Rice Mills (1981) 4 SCC 148 – distinguished.

2.1 The power to mould relief is always available to the court possessed with the power to issue high prerogative writs. In order to do complete justice it can mould the relief, depending upon the facts and circumstances of the case. In the facts of a given case, a writ petitioner may not be entitled to the specific relief claimed by him but this itself will not preclude the writ court to grant such other relief which he is otherwise entitled. [para 9] [1017-C-D]

2.2 A writ petition broadly speaking is held infructuous when the relief sought for by the petitioner is already granted or because of certain events, there may not be necessity to decide the issue involved in the writ petition. In the instant case, the resolution of the Governing Body was still holding the field when the writ petition was heard and, in fact, was to operate for a further period. Therefore, it can not be said that the relief claimed by the appellant had become infructuous. In any view of the matter, as the effect of the order continued, the Single Judge was right in moulding the relief. The impugned order of the Division Bench of the High Court is set aside and that of the Single Judge restored. [para 10, 13] [1017-F-H; 1018-A-F-H]

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Case Law Reference:

(1981) 4 SCC 148 distinguished para 7

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10319 of 2010.

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From the Judgment and Order dated 30.07.2009 of the High Court of Madras at Madurai Bench in W.A.(MD) No. 366 of 2009.

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P.S. Patwalia, Prasanth P., Uma Shankar, Aman Preet Singh and K.V. Bharathi Upadhyaya for the Appellant.

Soli J. Sorabjee and G.R. Swaminathan, G. Balaji, Mahalakshmi Pavani, Parthasarathy (for Mahalakshmi Balaji & Co.) R. Nedumaran and Vimal Dubey for the Respondents.

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The Judgment of the Court was delivered by

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CHANDRAMAULI KR. PRASAD, J. 1. Petitioner happens to be a member of Aruppukkottai Nadarkal Uravinmurai Pothu Abiruthi Trust and elected as its President for two terms i.e. 2003-2006 and 2006-2009. By a resolution of the General Body dated 7th January, 2007 he was debarred from holding any post in Aruppukkottai Nadarkal Uravinmurai Pothu Abiruthi Trust (hereinafter referred to as the 'Trust') for a period of 10 years. The aforesaid resolution was sent to the

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Secretary to the Government, Revenue and Registration Department, for its registration. Aggrieved by the same petitioner filed Writ Petition (MD)No. 3414 of 2009 before the Madurai Bench of Madras High Court, inter alia, praying to restrain the respondent from registering the same. Petitioner

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further filed Writ Petition (MD) No.3657 of 2009 for a direction to the third respondent in the writ petition to enquire into the affairs of the Trust according to the provisions of the Tamil Nadu Societies Registration Act, 1975, in the light of the representations dated 5th May, 2008 and 28th September,

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2008. Petitioner filed another writ application bearing W.P.(MD) No.4269 of 2009 for a direction to the third respondent to consider his representation dated 22nd December, 2008. In the representations dated 5th May, 2008 and 28th September, 2008 referred to above the petitioner questioned the resolution passed by the General Body on 7th January, 2007 and as also the authority of respondent Nos.6 and 7 of the writ petition to pass the resolution. In the representation dated 22nd December, 2008, the petitioner questioned the validity of the Governing Body itself.

2. All the writ petitions were heard together and while questioning the validity of the resolution dated 7th January, 2007 debarring the petitioner from holding any post in the Trust for a period of 10 years, it was contended before the learned Single Judge that the Trust is governed by bye-laws and it does not empower either the General Body or Governing Body to debar any person from holding any post for a stipulated period. As observed earlier the prayer of the petitioner was to restrain the respondents from registering the resolution dated 7th January, 2007 but even before the writ petition was filed the same was registered on 5th December, 2008. Accordingly, the learned Single Judge was of the view that the said prayer has become infructuous but it proceeded to mould the relief sought for by the petitioner and held that the resolution dated 7th January, 2007 "debarring the petitioner for a period of 10 years is patently illegal, the fact that the resolution had been filed on 5th December, 2008 will not have any legal sanction and the petitioner continues to be the member of the Trust". While granting the aforesaid relief the learned Single Judge found that there is no provision in the bye-laws of the Trust to debar any person from holding any post. Relevant portion of the judgment of the learned Single Judge in this regard reads as follows:

"As stated supra, there is no provision in the bye-laws of the Trust enabling General Body or Governing Body to debar any person from holding any post.

- A Therefore, when the bye-laws are silent about the power
of the Trust to debar any person from holding any post, the
resolution passed on 07.01.2007 debarring the petitioner
from holding any post for a period of 10 years is patently
illegal and therefore, even though the resolution has been
B registered by the District Registrar, the resolution has no
legal sanction and it is not legal”.

3. Aggrieved by the same respondent Nos.4 to 7 in the
writ petition preferred Writ Appeal No.366 of 2009. The Division
Bench of the High Court set aside the order of the learned
C Single Judge on its finding that the petitioner filed
representation to the Registrar on 5th May, 2008, that is after
16 months from the date of the resolution i.e. 7th January, 2007
and further having not approached the High Court or the Civil
Court the writ petition filed in April, 2009 after 27 months of the
D resolution deserves to be dismissed. The Division Bench
further observed that the learned Single Judge having held the
writ petition as infructuous ought not to have moulded the relief
and set aside the resolution being contrary to bye-laws. It further
observed that the issue ought not to have been decided in the
E writ petition and the petitioner ought to have been relegated to
the remedy of civil suit. The observation of the Division Bench
in this regard reads as follows:

- “But unfortunately, the petitioner made a representation to
the Registrar after 16 months of the said resolution. The
F first representation was dated 05.05.2008. Even after the
said representation, the first respondent neither came to
this Court nor went to a Civil Court. He waited till April,
2009 to move a Writ Petition seeking to forbear the
District Registrar from recording Form No.VII. At the time
G when the first respondent filed the Writ Petition in April,
2009 seeking to restrain the District Registrar from
recording the resolution, a full period of about 27 months
had passed. During this period of 27 months, the first
H respondent went into a slumber and did not come to this

Court challenging the resolution. Therefore, we are of the considered view that the learned Judge was not right in adjudicating a question which was not actually before him. When the very prayer of the first respondent not to register the resolution was doubtful of being entertained, in view of the efflux of about 27 months, the first respondent would not have been entitled to the relief of setting aside the very resolution as being contrary to the bye-laws".

4. The petitioner assails the aforesaid order in this petition.

5. Leave granted.

6. Mr. P.S. Patwalia, learned Senior Counsel, appearing on behalf of the appellant submits that the Division Bench of the High Court ought not to have set aside the order of the learned Single Judge on the ground that the appellant had approached the High Court belatedly. He points out that the resolution dated 7th January, 2007 debarred the appellant from holding any post of the Trust for a period of 10 years and, therefore, it had adverse effect on the day the writ petition was filed and even continues till date. He submits that the appellant had filed the writ petition to restrain the authority to register the resolution and taking into account the fact that the resolution has already been registered, the learned Single Judge moulded the relief, which Courts having the power to issue prerogative writs always possess. He further submits that the registration of the resolution in the opinion of the learned Single Judge rendered the writ petition infructuous and in the background of the fact that the effect of the resolution was to continue for 10 years it moulded the relief and the same ought not to have interfered in appeal.

7. Mr. Soli J. Sorabjee, learned Senior Counsel, appearing on behalf of the respondents, however, submits that once the learned Single Judge held the writ petition to be infructuous it ought not to have gone into the merit of the case and held the resolution to be bad. He further points out that inordinate delay

- A in filing the writ petition also disentitled the appellant to the relief granted and, therefore, the Division Bench rightly set aside the said order. Reliance has been placed on a decision of this Court in the case of *State of Haryana and others v. Krishna Rice Mills*, (1981) 4 SCC 148, in which it has been held as follows:
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C “The High Court noted the assurance and on that observed that the writ petition would become infructuous. But the High Court did not stop there. It proceeded to consider the question on the merits whether the aforesaid transactions constituted a sale for the purpose of the Haryana General Sales Tax held that they did not Act and the Central Sales Tax Act. The High Court. Hence this appeal.

D After hearing learned counsel for the parties, it seems to us that the High Court should not have proceeded beyond recording the assurance that the State Government would withdraw the instructions and holding that therefore the writ petition had become infructuous. In our opinion, no further question arose for consideration by the High Court.”

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F 8. Mr. Sorabjee further points out that the General Body resolved to debar the appellant from holding any office of the Trust for 10 years because of the serious charges of financial impropriety and removing 526 members of the Trust in block and they could regain their membership by bringing an action in the Court and, therefore, the appellant was not entitled to the discretionary relief under Article 226 of the Constitution.

G 9. We have bestowed our serious consideration to the submissions advanced and we are of the opinion that the Division Bench of the High Court erred in setting aside the order of the learned Single Judge. It is an admitted position that the bye-laws which governs the Trust do not provide for debarring any member of the Trust from holding a post for

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specified period. Bye-laws provide for removal of the membership in accordance with the procedure prescribed therein in case a member is found to be indulging in activities prejudicial to the Trust. The power to remove the member in our opinion shall not include power to debar the member from holding an office of the Trust. As the resolution of the Governing Body debarring the appellant from holding the office of the Trust was valid and operative when the matter was pending before the learned Single Judge, he did not err in quashing the resolution. The power to mould relief is always available to the Court possessed with the power to issue high prerogative writs. In order to do complete justice it can mould the relief, depending upon the facts and circumstances of the case. In the facts of a given case a writ petitioner may not be entitled to the specific relief claimed by him but this itself will not preclude the Writ Court to grant such other relief which he is otherwise entitled. Further delay and latches does not bar the jurisdiction of the Court. It is a matter of discretion and not of jurisdiction. The learned Single Judge had taken note of the relevant facts and declined to dismiss the writ petition on the ground of delay and latches.

10. True it is that the learned Single Judge had observed that the writ petition had become infructuous and still proceeded to grant relief to the appellant. In our opinion, the learned Single Judge may not be absolutely right in observing that the writ petition had become infructuous as the resolution debarring the appellant was still operative. In our opinion a writ petition broadly speaking is held infructuous when the relief sought for by the petitioner is already granted or because of certain events, there may not be necessity to decide the issue involved in the writ petition. Here in the present case the resolution of the Governing Body was still holding the field when the writ petition was heard and in fact was to operate for a further period, hence it can not be said that the relief claimed by the appellant had become infructuous. In any view of the matter, as the effect of the order continued, the learned Single Judge was

- A right in moulding the relief. The act of the appellant in removing a large number of members and financial impropriety will not clothe the General Body to pass resolution debarring the appellant from holding the post for 10 years, as no such power is conferred by the bye-laws. The action being patently illegal, the learned Single Judge could not have declined the relief taking into account the alleged action.

11. As regards the decision of this Court in the case of *Krishna Rice Mills*(supra) relied on by Mr. Sorabjee, the same has no bearing in the facts and circumstances of the case. In the said case the instruction issued by the Government was challenged and when the matter was taken up it was conceded by the State that the State Government would withdraw the instruction. In view of the aforesaid the High Court observed that the writ petition has become infurctuous and in that background this Court observed that the High court ought not to have gone into the merit of the case. In the present case the resolution debarring the appellant was and still in force and, therefore, the learned Single Judge rightly gone into its validity. Hence, the judgment relied on in no way supports the contention of the respondents.

12. For all these reasons the impugned order of the Division Bench cannot be sustained and it is set aside and that of the Single Judge is restored. However, this will not preclude the respondents from proceeding against the appellant for removal of his membership in accordance with law.

13. In the result, the appeal is allowed the impugned order of the Division Bench is set aside and that of the learned Single Judge restored. In the facts and circumstances of the case, there shall be no order as to costs.

R.P.

Appeal allowed.