* **HIGH COURT OF DELHI : NEW DELHI**

\+ **I.A No. 10680/2008 in CS (OS) No. 1844/2008**

% Decided on: 27th October, 2009

Salman Khurshid ...Plaintiff
Through : Mr. Salman Khurshid, Plaintiff in person with Mr. Imtiaz Ahmed, Adv.

Versus

Delhi Public School Society & Anr. ...Defendants
Through : Mr. Dushyant Dave, Sr. Adv. with Mr. Puneet Mittal, Mr. Manoj Kumar and Ms. Madhvi Diwan, Advs.

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

MANMOHAN SINGH, J.

1. By this order, I shall dispose of I.A. No. 10680/2008 filed by the plaintiff in CS (OS) No. 1844/2008 wherein the plaintiff has sought the ex parte stay of operation of letter dated 1st September, 2008 and the confirmation of the said order after notice.

2. The Plaintiff herein has filed the present suit for declaration and mandatory injunction seeking prohibitory orders against his expulsion from the Delhi Public School Society (hereinafter referred to as the 'defendant society'). By doing so, the plaintiff has assailed the letter issued by the Chairman of the defendant society on 1st September,

2008 through which the plaintiff was informed of the reasons for his expulsion and thereafter called upon to withdraw from the society by invocation of Rule II (7) of Rules and Regulations of the defendant society. The plaintiff has challenged the said letter dated 1st September, 2008 on several grounds in the present suit. Along with the suit, the plaintiff filed the present application under consideration for stay of the operation of the impugned letter.

3. The brief factual matrix which has led to filing of the present suit can be summarized as follows. The Plaintiff is stated to be a member of the defendant society since the year 1984. The plaintiff has made high claims about his immense contribution towards the defendant society and his tenure as a president of the same which initiated in 1993 and continued till 2004.

4. The defendant is stated to be a society registered under the Societies Registration Act, 1860 and was formed in the year 1949. The Society at the time of filing of the present suit consisted of the following members :

i) Sh. Salman Khurshid

ii) Dr. A. R. Kidwai

iii) Sh. Inderjit Seth

iv) Lt. Gen. J.S. Bawa

v) Dr. (Mrs.) Usha Luthra

vi) Justice B.N. Kirpal (Retd.)

vii) Dr. Montek Singh Ahluwalia

viii) Sh. V. R. Vaish

ix) Sh. Pramod Grover

x) Sh. Ashok Chandra

xi) Sh. Narender Kumar

xii) Sh. V. M. Thapar

xiii) Sh. Khushwant Singh

xiv) Justice N.N. Goswamy (Retd.)

xv) Dr. (Miss.) A. Nanda

xvi) Sh. V. Shunglu

xvii) Ms. Shovana Narayan

xviii) Admiral I.C. Chopra

xix) Mr. Ravi Vira Gupta

xx) Sh. S. L. Dhawan

xxi) Sh. B. P. Khandelwal

xxii) Ms. Sharda Nayak

5. The plaintiff in the suit discusses the objects of the defendant society and other rules of the society to explain the structure of the society. The said objects and rules as explained in detail on pages 3 to 6 of the plaint are reproduced as under :

> "The Memorandum of Association of Delhi Public School Society includes the following significant provisions:-
>
> 1. **Objects:** The objects of the Society shall be:-
>
> (i) To establish progressive schools or other educational institutions in Delhi or outside Delhi, open to all without any distinction of race or creed or caste or special status with a view.

(ii) To impart sound and liberal education to boys and girls during their impressionable years – a type of education that will lay stress on character building, team work, physical development and will infuse in school children a spirit of adventure, fair play and justice.

(iii) To develop among its students a feeling of pride in Indian culture and to produce citizens who will be truly Indian and will rise above social, communal, religious or provincial prejudices.

Rule II(1)
II. Membership

1. For the purpose of registration the Society is declared to consist of 20 members but it may, when it thinks fit, register an increase of members subject to the total membership not exceeding 30 (including the Education member if he is not a member of the society) see VIII, 2 below, at any time excluding ex officio members (Principals of Higher Secondary Schools and Education Member, if he is not a member of the Society)

Rule II (2) (i)
2(i) There may be a President and a Vice President of the Society who will be ipso facto members of the Society and the Working Committee and would be invited to attend any meetings of these bodies.

Rule II (7)
7) The Chairman of the Society may in consultation with President and Vice President or in consultation with the Working Committee at any time by notice in writing require a member to withdraw from the Society and the person so required to withdraw shall, at the expiration of one month from such hotics being given, cease to be a member.

Rule II (10)
10) The Principals and Vice Principals of the Schools (upto Higher Secondary level) will be ex officio members of the Society.

Rule VIII (2)
VIII. Working Committee
2. The Working Committee shall consist of (1)

Chairman, (2) Vice-Chairman, (3) Treasurer, (4) Secretary, (5) Principal/Principals of Schools upto Higher Secondary level, (6) Five other persons elected by the Society from among its own members, (7) one teacher of each institution of Higher Secondary level nominated by the Chairman in consultation with its Principal and (8) Vice-Principal of Higher Secondary Schools.

One of the five elected members or any other suitable persons could be appointed as Education Member. If such a person is not a member of the Working Committee, he would become an ex officio member of the Working Committee and of the Society.

Rule IX

IX. President and Vice-President

1. The Society may elect a President and Vice-President of the following categories:-

(a) They may be elected from the members of the Society who have eminent record of public service particularly in the field of education and have rendered long and distinguished service for a number of years as members of the Working Committee and/or as Chairman of the Society.

OR

(b) From among persons of such eminence in public life that their associated with the Society will add luster to its activities and will provide guidance and inspiration for its working.

2. The President and Vice-President will be invited to all meetings of the Society and the Working Committee and their advice sought on all vital policy matters connected with the running of the schools under the Society."

6. The plaintiff has stated that the rules and regulations cited above make it clear that the defendant society is entitled to establish its own schools and no lending of the name is permissible under the rules and regulations of the defendant society. The plaintiff has then made the larger issue by pointing out that there are infirmities in the functioning of the defendant society in relation to the establishing of the franchisee

'satellite' schools and the defendant society has taken royalty exceeding Rs. 50 lakh per year for lending its name. As per the plaintiff, this amounts to commercialization of the education which is impermissible. The plaintiff has then stated that there are 11 schools owned directly by the defendant society and 119 institutions that have been lent the name of DPS in return of money taken as royalty.

7. The plaintiff alleges that there is a tremendous increase in the budget of the defendant society and the benefits given are extremely high which affects the functioning of the society. The background which has been given by the plaintiff to substantiate his stand is that the plaintiff is amongst the few members in the defendant society who wanted to democratize the functioning of the society given the growing number of schools owned by the defendant society. The plaintiff wanted equal participation of the satellite schools which according to him has not been well received by the other members and has thus become the reason for his expulsion.

8. The plaintiff in the suit has gone on to demonstrate that there is malfunctioning within the society on account of its members who according to him are violating the memorandum of the defendant society. The plaintiff has brought to this court's attention certain past incidents reflecting the malfunctioning in the defendant society which can be encapsulated as under:

(a) The plaintiff raised concern regarding the voting rights of the principals and vice principals of the DPS satellite

schools to vote in the proceedings. The plaintiff contends that in the present case of the plaintiff's expulsion, the DPS schools' principals' votes were accepted but the votes of the principals of satellite schools were never taken and the same is discriminatory according to the plaintiff;

(b) An extension after retirement age/end of contract was given to some principals and not to others on non-objective criteria and this has been objected to by the plaintiff as improper functioning;

(c) Non appointment of a few eligible principals in DPS Faridabad;

(d) Non Profit terms contained in the DPS memorandum and the contradictory act of the defendant society of taking payment of Rs. 25 lac as 'label' fees for lending the DPS name and logo from the satellite schools;

(e) Improper allowance of lending the DPS name to other schools; and,

(f) Misappropriation of funds.

9. By bringing to focus the aforesaid infirmities, the plaintiff has contended that the defendant society has violated manifold rules and regulations and the plaintiff only intended to bring rationality and democracy in the working of the society. However, the defendant society in an improper and incomplete manner gave the notice/letter dated 1st

September, 2008 to the plaintiff after the working committee meeting dated 28th August 2008, which has been averred by plaintiff to be illegal as the vice principals of satellite schools were not included in the said meeting. Further, the plaintiff averred that the said notice/letter dated 1st September, 2008 has been impugned as being ultra vires the Societies Registration Act, 1860 and also being against the principles of natural justice. The plaintiff in the suit also prays that the Rule II (7) of the defendant society's Rules be declared as void as it is arbitrary and against the principles of the natural justice.

10. The defendants have filed their reply to the present application as well as the written statement and put forth their defenses in the following manner:

a) That the plaintiff has waived his right to challenge Rule II (7) as the plaintiff himself has been a member since 1984 and President of the defendant society for a long tenure from 1993 to 2004. He was fully aware of the rule and has never objected to the existence of the said rule before.

b) That the plaintiff himself during his tenure as president of the society invoked the impugned rule and now has sought to challenge it when the very same rule has been invoked against him. The defendant has given the instance of one member Mr. B.K. Raizada, who was called upon to withdraw from the defendant society consequent to consultation between the President

(plaintiff as he then was) and the Chairman as per Rule II (7). The plaintiff also filed a written statement supporting the said action on behalf of the society in suit filed against the defendant society by Mr. Raizada. The pleadings in the suit no. 1906/1998 and the written statement filed therein are filed with the documents in support of the written statement. The defendant thus contended that Rule II (7) has been in existence for over the last three decades and has since then been within the knowledge of the plaintiff.

c) The working committee according to the defendant was rightly constituted and as per practice and norms and a meeting of the same was properly held on 28th August, 2008. It is submitted that as per the resolution of 11th December 2000, the vice principals were not required to be invited for the working committee meetings. The said resolution was also confirmed by the plaintiff.

11. Aggrieved by the impugned letter dated 1st September, 2008 and filed the present suit on 4th September, 2008. On 30th September, 2008 a statement was given by the counsel for the defendants that the period of cessation of membership can be extended till the next date of hearing and finally after completion of pleadings on 26th November 2008, the said undertaking of the defendants was extended till the hearing of the matter on merits.

12. The matter then came up before this court after admission and denial when the matter was heard comprehensively. The plaintiff has impugned the notice dated 1st September, 2008 and has made the following submissions to support his argument:-

(a) That the impugned notice is bad under the law as the decision of the working committee by which the plaintiff was expelled was an incomplete corum and in contravention of Rule VIII (2) which provides for the constitution of the working committee.

(b) That the action in form of the impugned notice is vitiated by denial of the principles of natural justice.

(c) That Rule II (7) of the defendant society's Rules is ultra vires the Society Registration Act.

(d) That the plaintiff's expulsion in this manner is actuated by mala fides as the plaintiff is amongst one of the members who are in minority and has been frank about the issues relating to the functioning of the society as well as who wants to democratize the working of the society. To support this submission, the plaintiff has relied upon several instances which as per the plaintiff are glaring examples of misadministration, and the plaintiff's grievance is that as he has raised his voice against such maladministration, he has to face the consequences.

13. The main instances of misadministration against which the plaintiff raised an objection are as under :

a) The distinction between the two kinds of the schools, i.e. between the 11 DPS Schools and the 119 satellite schools.

b) The exorbitant royalty charged from the satellite schools for signing contracts whereby the name and logo of DPS can be endorsed by the former, which according to the plaintiff is the commercialization of the education.

c) The inequality in the voting rights of the principals and vice principals of the DPS Society owned schools and the satellite schools and the need to bring both at parity with each other.

d) The defendant society is allowing the user of the name 'DPS' without proper framework and acquiescing and diluting the Intellectual Property Rights of the same.

14. To support the submissions mentioned above, the plaintiff has referred to the following judgments, relevant portions whereof have been submitted hereunder :

I. **M.H. Devendrappa v. State of Karnataka, (1998) 3 SCC 732, paras 16 and 17**

> "This does not mean that legitimate action discreetly and properly taken by a government servant with a sense of responsibility and at the proper level to remedy any malfunction in the organisation would also be barred."

II. **Delhi Abhibhavak Mansangh v. Union of India, AIR 1999**

Del 124, paras 20, 27, 34, 40 and 49

> "In view of the provisions of the Rules it cannot be said that transfer of funds from school to society is permissible."

III. **Central Inland Water Transport v. Brij Nath Ganguly Corp., 1986 (3) SCC 156, paras 76, 77, 79, 83, 88, 89 to 93, 97and 98**

> "Practices which were considered perfectly normal at one time have today become obnoxious and oppressive to public conscience."

IV. **Delhi Transport Corp. v. DTC Mazdoor Congress, 1991 (Suppl 1) SCC 600, paras 220, 230, 240 and 277**

> "Further, there should be adequate reason for the use of such a power, and a decision in this regard has to be taken in a manner which should show fairness, avoid arbitrariness and evoke credibility.
>
> Any law, much less the provisions of the Contract Act, which are inconsistent with the fundamental rights guaranteed in Part III of the Constitution, by operation of Article 13 of the Constitution are void."

V. **The Punjabi Bagh Co-op. Housing Society v. K.L. Kishwar, 95 (2002) DLT 573, para 15**

> "The defendant who was member of the society had the right and duty to the office bearer of the society and concerned authorities under the law against the mismanagement of the affairs/ funds of the society."

15. The plaintiff has submitted that the plaintiff intended to bring the element of democracy into the defendant society which was not liked by some other members who happened to be in majority, therefore the consequence of this clean hearted intention of the plaintiff has resulted in his improper removal from the society and the impugned action is patently illegal as Rule II (7) is ultra vires the Societies

Registration Act.

16. On the other hand, the defendant society has made the following submissions to support its contentions that the action taken by it is a valid one:

(a) The plaintiff is guilty of misrepresentation and suppression of material facts, which disentitles him from the discretionary relief of injunction as the plaintiff himself has been instrumental in the acts which he is now complaining of.

(b) The plaintiff himself has invoked Rule II (7) during his tenure as President of the defendant society and now when he is on the receiving end, he is complaining about the vires of the said rule.

(c) The pleadings regarding the challenge to Rule II (7) are missing.

(d) There has been no denial of natural justice, rather there is an inbuilt mechanism of a hearing opportunity for the aggrieved/expulsed member which provides for 30 days period from the date of the letter of expulsion in the impugned rule itself before cessation of the membership actually takes place and this period is for this purpose alone.

(e) The plaintiff has rushed to the court without seeking any representation. Further, in the reply dated 2nd September,

2008 to the said notice, the plaintiff never demanded any hearing and straightaway approached the court. The plaintiff when asked to participate in the hearing by the society after listing of the matter has not given any heed to the letter dated 5th September, 2008 sent by the society asking for a hearing and rather refused to attend the hearing.

(f) The plaintiff's actions are not in any way democratizing the working of the society but rather the plaintiff is guilty of gross misconduct by inciting outsiders against the society. The said acts were done unilaterally by the plaintiff without the society's consent and the plaintiff has been warned to that effect by way of letter dated 7th August, 2007 and thereafter when things went out of control, the society was entitled to take a decision as per Rule II (7) of the defendant society's rules and regulations.

(g) The jurisdiction of a civil court is extremely limited in cases involving the expulsion of a member from a society governed by the Societies Registration Act and the court cannot sit in an appeal over such a decision of a society.

(h) That previously one Mr. Raizada was a member of the society and he was expelled by invocation of the same rule II (7). A suit was subsequently filed by Mr. Raizada

challenging the impugned rule. In that case, the plaintiff has supported the said rule. Further, no interim relief has been granted in the said suit and likewise, the present case also does not warrant any interim relief.

(i) The constitution of the working committee cannot be a subject matter of challenge in the present proceedings. This is due to the waiver on behalf of the plaintiff as the plaintiff has himself been a participant in the working committee during his long tenure as member/president and he never insisted for the attendance of vice principals in the said meetings at that time.

17. The defendants have equally demonstrated instances referring to the acts of misconduct of the plaintiff. These acts are as under :

(a) Trying to mischievously incite a rebellion amongst the management of the satellite schools by unilaterally calling them to meetings, instigating them against the Society, calling upon them to stop making payments to the Society etc. thus attempting to procure breach of contract with the Society. The contention of the plaintiff that he was merely proposing a "democratic defiance of the illegal agreement within the family of DPS" is false. The correct forum for the plaintiff to vent his grievances is at the meeting of the Society. It is incorrect on his part to whip up propaganda among third parties while

remaining a member of Society. Instances of this propaganda can be seen in letter dated 3rd August, 2007 at page 42, a newspaper report at page 45 and 46 and in letter dated 16th August, 2008 at page 54 of the plaintiff's documents.

(b) The plaintiff has been using inappropriate language against the Society's members and management in his correspondence and the same has continued and is even apparent in the plaint.

(c) The plaintiff has falsely held himself out to be President of the Society even four years after he ceased to hold that office.

(d) The plaintiff has indulged in anti society activities including making allegations on the manner and functioning of DPS Society.

(e) The plaintiff has been insisting on voting rights for satellite schools and that the Pro Vice Chairman should collectively decide the budget of the DPS Society.

(f) The plaintiff made unilateral announcements to the following effect. He announced the establishment of a new school membership committee comprising trustees and owner members of the start of a new office of the DPS Society and also a new Charter for the Society which he said would be communicated to the Pro Vice Chairman shortly; of two fast track projects to be

launched and of new schools in Fatehpur, Mangalore, Ranchi, Muzaffarpur, Rudrapur, and Baku in Azerbaijan without authorization from the Society. Further, he told the Pro Vice chairpersons to endorse the new Charter and take control of the institution; and

(g) Filed a PIL seeking an investigation into the affairs of the Society and initiated a campaign of vilification in the print and television media. The said acts were aimed at disrupting the functioning of the Society and tarnishing its fair name, causing prejudice to the thousands of students studying in DPS Schools.

18. The plaintiff herein Mr. Salman Khurshid appeared in person and argued the present matter. Mr. Khurshid submitted that the impugned notice dated 1st September, 2008 and the action taken through it are vitiated as the working committee was not properly constituted and thus a decision taken by a working committee which was improperly formed would be invalid. To amplify his submission, the plaintiff argued that the vice principals of satellite schools ought to have been present at the working committee meeting which resolved on 28th August, 2008 to invoke Rule II (7) against the plaintiff and to send the impugned notice to him. On the basis of Rule VIII (2) of the defendant society rules and regulations which has been referred earlier in para 5 of this order. The plaintiff contended that due to the incomplete coram of the working committee, this court should hold the decision taken by it as well as the

impugned notice as void.

19. Per contra, Senior Counsel Mr. Dushyant Dave appearing on behalf of the defendant contended that the defendant working committee was properly constituted and the plaintiff himself has been part of the said committee and has been attending the meetings of the same during his long tenure and never during that time insisted upon the presence of the vice principals as members. Rather, it is contended by the learned senior counsel for the defendant that it has been resolved long back in and around December 2000 in a General Body Meeting that vice principals will not attend the working committees and though the plaintiff was not present at this meeting, the minutes of this meeting were adopted and confirmed in the next General Body Meeting held on 28 December, 2001 which was chaired by the plaintiff. Hence, there is no infirmity in the membership of the committee. In reply, the plaintiff has submitted that he does not remember the resolution wherein the presence of the vice principals at the working committee meetings was dispensed, neither does he recollect any acceptance of the same by himself.

20. I have gone through the submissions of both sides and have also examined the rules and regulations of the defendant society. It is noteworthy that the rules and regulations of the defendant society intend to recognize the validity of the decisions of the working committee in cases of defects and disqualifications and also in cases of vacancies of offices. The rules VIII (11) and VIII (12) provide as under :

> "Rule VIII (11) : All acts done at any meeting of the Working Committee or by any person as a member of the Working Committee shall be valid notwithstanding that it be afterwards discovered that there was some disqualification or defect in the appointment of any member of the Working Committee.
>
> Rule VIII (12) : No act of the proceedings of the Working Committee shall be invalid merely by reason of the existence of a vacancy or vacancies in the body or any defect in the co-option, nomination or election of any of its members.

21. From a reading of the above rules, it can be said that the rules themselves recognize that the decision of the working committee shall remain valid even in case of defects and disqualifications. It is further a matter of fact that the plaintiff has been stated to have been a participant in all other working committee meetings of the society. At that time, the vice principals of satellite schools were not attending the meetings and decisions were taken which remained valid.

22. This court as per well settled law will not sit in judgment or appeal to the decision of the society and has to recognize the functioning of the defendant society as per its own rules and regulations. Under these circumstances, it is difficult to hold that merely because of the absence of vice principals who earlier weren't even participants in the working committee meetings and especially when the rules provide for express validity in cases of defects and disqualifications, the decision of the working committee is not valid. I find that the decision of the working on this count cannot be held invalid.

23. The next submission of the plaintiff is that Rule II (7) and its invocation is bad and the decision expulsing him is void as the impugned

notice is against the principles of natural justice and the plaintiff has not been accorded the opportunity of being heard. The submission of the plaintiff can be broken down into the following grievances :

(a) That Rule II (7) does not provide for the principles of natural justice and the same should be declared invalid/ ultra vires by this court.

(b) That the notice dated 1st September, 2008 did not provide hearing to the plaintiff and as he had not been heard fairly and was not permitted to explain his case, thus the decision arrived at ought to be null and void.

(c) That the offer of a post decisional hearing immediately upon filing of the present suit cannot compensate the lack of a pre decisional hearing which according to the plaintiff is a pre requisite for any decision.

(d) That the decision of the working committee violates the principle of *nemo judex in re sua* as the society members who will preside over the fate of the plaintiff are interested parties and not unbiased parties.

24. To support his submission, the plaintiff has relied upon several judgments of the Apex Court wherein the principles of natural justice, more specifically the principle of *audi alteram partem/* right to fair hearing has been stated to be an absolutely essential for any valid decision of a quasi judical or administrative body. Some of these

judgments on the principles of natural justice with their respective relevant portions are reproduced as under. In **K.L Tripathi v. State Bank of India and Ors., (1984) 1 SCC 43** it has been held by the Apex Court as follows :

> "23. On 4th November, 1976, Writ application under Article 226 was filed by the appellant in the Allahabad High Court alleging contravention of the State Bank of India (Officers and Assistants) Service Rules and on 2nd February, 1978, the Allahabad High Court by its judgment held that the rules had no statutory effect and as such, the writ application was dismissed. The appellant, being the petitioner therein, has now come up by special leave to this Court under Article136 of the Constitution. It appears that the main controversy before the Allahabad High Court was whether Rule 50 of the aforesaid rules in force at the relevant time has been complied with or not. On behalf of the State Bank of India, it was urged that the said rules not having been framed under the State Bank of India Act, these had no statutory force and as such the appellant could not enforce any statutory right. In that light, the application under Article 226 of the Constitution was held not to be maintainable.
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> 29. The main argument of Mr. Garg, counsel for the appellant, was that the requirements of Rule 50 of the aforesaid rules have not been complied with. He submitted that the materials against the appellant were gathered in his absence and he was not allowed to cross-examine the witnesses, and that evidence against him was not recorded in his presence. He urged that only an opportunity to show cause, after he had replied the charges against him which were based on materials gathered behind him for imposition of penalty, was given. He submitted that reasonable opportunity under the rules required that materials against a person should not be gathered behind his back and he should be given an opportunity to cross-examine, if necessary, the persons who had supplied the materials or given evidence against him. He further submitted that the delinquent officer should also be given an opportunity to rebut Such evidence. Mr. Garg submitted that infraction of this procedure under the rules will make the investigation bad as basic fundamental requirement of an opportunity was implied in the rule. The impugned order should be struck down as having been passed in violation of the principles of natural justice.

> 43. Another aspect of the violation of the principles of natural justice that was urged before us on behalf of the appellant was that the final order did not contain reasons. In this connection reliance was placed on the observations of this Court in the case of Siemens Engineering & Manufacturing Co. of India v. Union of India and Anr. [1976] Supp. S.C.R. 489 where this Court observed that if courts of of law were to be replaced by administrative authorities and tribunals were essential then administrative authorities and tribunals should afford fair and proper hearing to the persons sought to be affected by the orders and give sufficiently clear and explicit reasons in support of the orders made by them. The Court, further, observed, that the rule requiring reasons to be given in support of an order is like the principle of audi alteram patem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."

25. Similarly, the plaintiff has relied upon **Central Inland water transport corporation Ltd v. B.N. Ganguly and Ors., (1986) 3 SCC 156** to support the proposition that the plaintiff cannot be made to suffer on account of an unconscionable bargain which is that the contract is unreasonable. Para 76 of the judgment reads as under :

> "76. Under which head would an unconscionable bargain fall? If it falls under the head of undue influence, it would be voidable but if it falls under the head of being opposed to public policy, it would be void. No case of the type before us appears to have fallen for decision under the law of contracts before any court in India nor has any case on all fours of a court in any other country been pointed out to us. The word "unconscionable" is defined in the *Shorter Oxford English Dictionary*, 3rd Edn., Vol. II, p. 2288, when used with reference to actions etc. as "showing no regard for conscience; irreconcilable with what is right or reasonable". An unconscionable bargain would, therefore, be one which is irreconcilable with what is right or reasonable."

26. Further the decision in **Swadeshi Cotton Mills v. Union of India, (1981) (1) SCC 664** was relied upon by the plaintiff to support the contention that in every decision making process whether judicial,

quasi judicial or administrative, the principles of natural justice are implicit. The following judgments were further relied upon by the plaintiff :

I. **Escorts Farms v. Commissioner Kumaon Division, (2004) 4 SCC 281, para 64**

> "Right of hearing to a necessary party is a valuable right. Denial of such right is a serious breach of statutory procedure prescribed and violation of rules of natural justice."

II. **D. Dwarkanath Reddy v. Chaitanya Bharathi Education Society, (2007) 6 SCC 130, paras 23, 24 and 26**

> "Once it is held that the appellants were properly inducted and had become promoter members of the society, principles of natural justice required issuance of notice asking for explanation and affording opportunity of being heard."

III. **T.P. Davier v. Lodge Victoria, (1964) 1 SCR 1, para 9**

> "The jurisdiction of the civil court is limited; it cannot 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 and does not act in good faith or acts in violation of the principles of natural justice."

IV. **Institute of Chartered Accountants v. L.K. Ratna, 1986 (4) SCC 537, paras 18, 27 and 29**

> "Moreover, there are cases where an order may cause serious injury as soon as it is made, an injury not capable of being entirely erased when the error is corrected on subsequent appeal."

V. **LIC of India v. Consumer Education & Research Centre, (1995) 5 SCC 482, paras 23, 27, 32, 38, 40 and 47**

> "Duty to act fairly is part of the fair procedure envisaged under Article 14 and 21. Every activity of public authority or those under public body or obligation must be informed by reason and guided by the public interest."

VI. **Union of India v. Rakesh Kumar, (2001) 4 SCC, para 21**

> "If by an erroneous interpretation of statutory rules pensionary benefits are granted to someone, it would not mean that the said mistakes should be perpetuated by direction of the court."

27. By relying on all these judgments, the plaintiff has submitted that as the notice dated 1st September, 2008 did not provide the plaintiff with an opportunity of being heard and the plaintiff was not summoned prior to the issuance of the said notice, the plaintiff has been denied the opportunity of being heard. The plaintiff contended that the subsequent offer of post-decisional hearing cannot substitute the requirement of a pre-decisional hearing. Judgments relating to pre-decisional and post-decisional hearing were also relied upon in this respect. According to the plaintiff, the impugned notice is liable to be stayed/ injuncted as it is violative of the principles of the natural justice. The plaintiff also relied upon the decision of this court in **Sarbjit Singh & Others v. All India Fine Arts and Crafts Society & Others, (1989) 2 DL 360** wherein a single judge of this court has held a rule similar to Rule II (7) as ultra vires.

28. In this regard, Mr. Dave, the learned Senior counsel for the defendant has made the following submissions :

(a) That there is an inbuilt mechanism of lapse of 30 days before the cessation of the membership becomes effective, enabling the aggrieved to make a representation in those 30 days.

(b) That there is waiver on part of the plaintiff and the plaintiff is estopped from contending that Rule II (7) is ultra vires as the plaintiff has himself invoked this rule against the members of the society including one Mr. Raizada. When challenged earlier, the plaintiff has fully supported the said rule and filed a written statement whereby the plaintiff has supported the vires of this rule in the earlier proceeding being CS (OS) No. 1906/1998 which is still pending before this court.

(c) That the plaintiff has acquiesced to the existence of the said rule and is not aggrieved by it and the same has merely been challenged because the said rule is now being used against the plaintiff. Rule II (7) has been in existence for decades and cannot be challenged now.

(d) That the plaintiff himself has not asked for any hearing and even in reply to notice dated 1st September 2008, the plaintiff did not demand for any hearing from the defendant. According to the defendant, in the previous case, a representation was made by Mr. Raizada to the society and thereafter the notice of expulsion was confirmed. In the present case, the plaintiff did not demand any hearing and rather approached this court hastily without even awaiting any further communication from the defendant society.

(e) That there was an emergent need to take a decision on the said date as the plaintiff had been giving press interviews against the defendant society and showing the latter in bad light continuously. Even after issuance of the notice dated 1st September 2008, the defendant on its own wrote a letter giving the plaintiff an opportunity of a hearing and inviting him to attend the same. However, the said opportunity has been denied by the plaintiff calling the working committee of the defendant society a 'kangaroo court'.

(f) The distinction between pre-decisional and post-decisional hearings will not apply in society matters as it has not been shown as to how the plaintiff is prejudiced by non grant of hearing considering that the plaintiff's membership was to cease 30 days after the date of issuance of the notice. Thus, the opportunity for a hearing in between that period cannot be faulted with and the plaintiff could have asked for the same and the defendant society is even willing to give such a hearing.

(g) That the plaintiff does not have a fundamental right to remain a member of the society and the society must have a free hand in running its internal management.

(h) That this court will not sit in appeal or judgment to examine minutely the observance of the principles/rules

stage by stage but rather look into the overall reasonableness of the decision making.

29. To buttress these arguments, the defendant has relied upon the judgment of **Maneka Gandhi v. Union of India 1978 (1) SCC 248** to support his contention that a post-decisional hearing can obliterate the procedural deficiency of a pre-decisional hearing. To prove otherwise, the affected party must show how it has been prejudiced by the want of a pre-decisional hearing.

30. The judgment of **T.P. Davier v. Victoria Lodge, (1964) 1 SCR 1** was also relied upon by the defendant to support the view that the jurisdiction of civil courts in matters related to expulsion of members is extremely limited and the court will not sit in appeal over these decisions of the society/club.

31. The judgment of the Apex Court in **Zoroastrian Coop Housing Society v. Dist Registrar, (2005) 5 SCC 632** was relied upon to counter the arguments of the plaintiff. The judgment states that no member of any society has a fundamental right of membership which he can enforce against the society.

32. In reply, the plaintiff reiterated the submissions which were made on the principles of natural justice and right to fair hearing. The plaintiff also stated that even if once some mistakes have been made in past, the same cannot continue to remain and be perpetrated within the functioning of the society. The plaintiff submitted that the case of Mr. Raizada was an exceptional circumstance wherein the plaintiff in his

then capacity as President was consulted. But that he participating in that decision cannot take away his right to independently challenge an unfair rule.

33. Before I examine the submissions on natural justice, I deem it appropriate to discuss the law relating to expulsion of members of a society.

34. The law as it emanates from the Davier's judgment (Supra) wherein the Hon'ble Supreme Court has succinctly discussed the parameters of enquiry in expulsion matters. It has been held by the Apex Court that the jurisdiction of a civil court in the matters of such expulsion is extremely limited and the courts must give due regard to the fact that the rules and regulations, so far as they are applied in good faith, are a matter of internal management of the society and must not be interfered with. The Apex Court has opined that the scope of enquiry in expulsion matters is extremely limited and that the parameters which are applied for measuring the reasonableness of the decisions taken by governmental authorities and tribunals cannot stand at par with expulsion matters. The court expresses its opinion in the following words:

> "The rules governing tribunals and courts cannot mutatis mutandis be applied to such bodies like lodges. We have to see broadly in the circumstances of each case whether the principles of natural justice have been applied. In the circumstances of this case, particularly when we find that the appellant had not raised any objection, we cannot say that the resolution passed by the lodge Victoria is bad for violating any principles of natural justice"

35. The said exposition of law has been further followed and appreciated in the recent case involving the Board of Cricket Control in India titled as **Dr. A.C. Muthiah S/o (Late) M.A. Chidambaram v. The Board of Control for Cricket in India rep. by its Secretary and N. Srinivasan, Secretary, The Board of Control for Cricket in India** decided on 13th July, 2009 :

> "5. The Executive Committee of a voluntary association cannot be put on par with a Court or a Tribunal when dealing with the disciplinary matters concerning the membership of the Body. They have a very wide latitude in deciding as to when disciplinary action is warranted, and the extent to which the powers vested in them under the Rules or byelaws should be exercised while penalizing the members for the misconduct which the appropriate Body within the association empowered to decide that question, considers him to be guilty. The procedure to be followed by such an association also cannot be that which is normally expected to be followed in a Court, or a Tribunal. Every letter written by the Executive Committee of an association to it's member calling for an explanation is not to be judge under a lens to find out the possible defects therein for the purpose of holding that the action that followed was not in consonance with the principles of natural justice. Even principles of natural justice are not required to be applied with the same degree of rigour as they would be in the case of adjudication before a Court or a Tribunal."

36. From the above, it is clear that the enquiry of the principles of natural justice in cases of tribunals and government authorities cannot be equated with cases of expulsion of members and the court has to look at the overall broad circumstances to gauge whether there is any violation of the principles of natural justice and it is from this perspective that the court has to examine the matter.

37. In the facts and circumstances of the present case, it is clear

that the notice dated 1st September, 2008 gives a 30 day period to the plaintiff before cessation of his membership. I find force in the submission of the learned senior counsel of the defendant that the plaintiff could have at least asked for a hearing within the 30 day time frame prescribed by the rules. The said 30 days, i.e. the period prior to the cessation of the membership began after issuance of the notice/letter under Rule II (7) and no prejudice would have been caused if the plaintiff had asked for a representation/ hearing to explain his cause. It is further noticeable that once the defendant society even offered a hearing to the plaintiff but the plaintiff rejected and abstained from attending the same.

38. The circumstances of the present case reveal that the plaintiff has not appeared to have raised any representation/ objection before the society for being condemned unheard, in fact as noted earlier in this order, the plaintiff has time and again reiterated that he would not appear before a 'kangaroo court'. No copy of letter dated 2nd September, 2008 sent by the plaintiff to the defendant society, details of which have been mentioned in the letter dated 5th September, 2008 has been filed by either party. Even in the case of Mr. Raizada which has been relied upon by the defendant, the expelled member Mr. Raizada made a representation and a hearing opportunity was accorded to the member.

39. The distinction between pre-decisional and post-decisional hearing which is of course the law applicable to statutory tribunals and authorities cannot in stricto senso be made applicable to society matters.

In a case like the present one and with such circumstances, even if the hearing had been conducted during the 30 day time period before cessation of the membership, there would have been sufficient compliance of the rules and regulations.

40. On examination of the broad and overall circumstances, it can be deduced that the plaintiff has not raised any complaint against the want of hearing opportunity after issuance of the letter dated September 1, 2008 except by way of the objection raised in the present suit, and this situation is similar to the one in Davier's case (supra) where the Apex Court did not interfere in the society's decision and found that there was no violation of the principles of natural justice for the same reason, i.e. that the appellant did not raise any objection. Applying the Davier's principle, in the present case too, once the plaintiff did not raise his concern/ complaint before the defendant society and did not attempt to explain his case is apparent from his reply dated 2nd September, 2008 referred to in plaintiff's letter dated 6th September, 2009 to the notice and chosen to abstain from attending the post-notice hearing, it cannot be said that there has been denial of the principles of natural justice and prima facie, the notice cannot be said to be bad on this ground.

41. The alternative submission made by the plaintiff is that Rule II (7) is ultra vires the Societies Registration Act. The submission was merely made and no substantive provisions/ arguments were cited/ made as to how this rule is ultra vires the Societies Registration Act.

42. Heavy reliance was placed on the decision of Sarabjit Singh

(supra) to state that this court can declare the impugned rule ultra vires as a learned Single Judge of this court has done so in that case. However, the Division Bench order of this court presiding over the appeal against that judgment has also been shown to me wherein the finding of the Single Judge has been stayed. Considering the fact that I have arrived at the conclusion that there is no denial of the principles of natural justice in the present case and the facts and circumstances herein are distinguishable from the earlier case, I am doubtful as to how the said decision can be stated to be a precedent applicable to the present case and am therefore unable to apply the same to the present case.

43. The next submission is as regards the incidents of mal-administration and mala fides in expulsion of the plaintiff and the instances exhibiting the same have been stated earlier in this order in para 13. Learned senior counsel for the defendant has equally demonstrated the acts of the misconduct on the plaintiff's part by citing past instances which have also been stated in para 16 earlier in the order.

44. The thrust of the submission of the plaintiff is that since the plaintiff intended to introduce the element of democracy in the working of the defendant society, he was expelled from the society and the expulsion, therefore, has been actuated by mala fides. I find that the incidents which have been cited by the parties, are at the best management problems, which any working organization faces in its functioning. The existence of mala fides is a disputed fact and has to be tested at the trial and it must be determined whether any mala fides can

be found to actually exist. At the prima facie stage, I find that it is difficult to comment upon the correctness or otherwise of instances which are essentially management problems and the same can be commented upon fairly only after trial.

45. Now, at this stage it is relevant to discuss the principles of grant of injunction which have been explicitly discussed in the recent decision of the Madras High Court titled as **Dr. A.C. Muthiah S/o (Late) M.A. Chidambaram v. The Board of Control for Cricket in India rep. by its Secretary and N. Srinivasan, Secretary, The Board of Control for Cricket in India,** decided on 13th July, 2009 and it is worth quoting these observations hereunder :

> "The principles which govern the grant or refusal of an interim injunction in aid of the plaintiff's rights are well settled and they depend upon a variety of circumstances. In the nature of things, it is impossible to lay down, any set, rigid or general rule on the subject by which the discretion of the court ought in all cases be regulated. As the plaintiff, by the interim injunction undoubtedly seeks to interfere with the rights of the opponent before the plaintiff's right is finally established, the injunction is not granted as a matter of course and it is necessary for the plaintiff to make out a strong prima facie case in support of the right that he asserts. It is true that at the interlocutory stage, the court should not embark upon a detailed investigation on the relative merits of the contentions of the parties and it is enough if the plaintiff raises questions of a substantial character calling for decisions after an examination of the facts and the law arising in the case. The Court can consider the nature and the merits of the rival contentions at the interlocutory stage only as bearing upon the limited question as to whether or not the plaintiff has made out a strong prima facie case. The Court should avoid expressing any opinion on the merits which would partake the character of a decision of the main issues in the case. The plaintiff should next make out the Court's interference if necessary to protect him from an injury or mischief imminent and it is at the same time irreparable. He should make out that

the injury is so serious, irreparable and imminent that an immediate order of Court is necessary even before his rights are established at the trial. Inseparably connected with this, is the burden, which lies upon the plaintiff to make out, that the comparative mischief or inconvenience which would ensue from withholding the injunction would be far greater from what would ensue from the injunction being granted. Lastly, which again is a very important consideration, is that in considering whether an interim injunction should be granted the court must have due regard to the conduct and dealings of the parties, before the application is made to the Court, by the plaintiff to preserve and protect his rights, since the jurisdiction to interfere being purely equitable, is governed by the equitable principles (Vide 21, Halsbury's Laws of England, paragraphs 766 and 767).

14. On the question of the balance of convenience and the threatened mischief or injury irreparable or otherwise, regard must be had to the nature of the suit and the particular right asserted like suits against Government, Public Corporations, Municipal Corporation, Statutory bodies, Social clubs and its members, Societies registered under the Societies Registration Act and its members distinguished from litigation between private individuals. In the case of clubs and Societies registered under the Societies Registration Act, the general principles governing the right of suit of an individual share holder or a member of the Company would apply and ordinarily the Court will not interfere with the internal management of the society at the instance of one or some only of the members of the society subject to well recognised exceptions (1) where the impugned act is ultra vires of the society , (2) the act complained of constitutes fraud or (3) whether the impugned action is illegal. The Rules are made by the society itself for the convenience of its members for regulating their own conduct as members and for regulating the affairs of the society as an entity. A breach of any rule made by the society would not give rise to a cause of action for any member to rush to Court, it must be a case of manifest illegality or where the act of omission or commission is something which goes to the root of the matter. All the members would be bound by the decision taken by the general body though there may be some violation of some Rules provided it is something which could well be condoned and ignored by the general body (Vide Shridhar Misra v. Jaihandra,: AIR 1959 All 598; Satyavart Sidhantalankar v. Arya Samaj, Bombay AIR 1946 Bom 516 and Nagappa v. Madras Race Club ILR (1949) Mad 808 at pp. 821 to 823 : (AIR 1951 Mad 831 (2) at pp. 835-836).

46. In the very same decision, the court also held that such decisions of a society taken by its majority cannot be thwarted at the instance of one individual. Useful reference may be made to para 22 of the judgment, which reads as follows:

> "22. The next aspect that has to be considered is the question of balance of convenience and the irreparable mischief or damage which the plaintiff would sustain in case the interim injunction is refused. As prefaced in my preliminary observations, this involves two aspects, (a) whether the mischief or injury is irreparable and so serious and (b) whether the plaintiff's complaint of the threatened injury is real or merely illusory and imaginary. In the first place, it has to be borne in mind that it is established law that at the instance of one member Courts are highly reluctant to interfere; at any rate, would not lightly interfere with the functioning of a corporate body or a society. It is not a dispute between two private individuals..."
>
> (Emphasis added)

47. In my view, the above observations are applicable to the present case. The plaintiff is unable to show a prima facie case in his favour as to how Rule II (7) is ultra vires and as to the reason why the plaintiff has not made his concern/ representation for a hearing before the defendant society prior to approaching this court within the thirty days time frame when the status of the plaintiff was still that of a member and when he could have asked for a hearing. The balance of convenience does not lie in favour of the plaintiff but in favour of the defendant as the defendant society is agreeable to give the plaintiff a hearing opportunity. Further, the contention of commercialization of education cannot elicit a comment from this court at the prima facie

stage as the same might unduly prejudice the case of the parties. The said contention of the plaintiff cannot be decided without trial.

48. In view of the above, no case is made out for grant of injunction and prima facie, there is no infirmity in the impugned notice dated 1st September, 2008. The undertaking given by the counsel for the defendant on September 30, 2008 shall cease to operate.

49. However, an opportunity is granted to the plaintiff who may seek a hearing before the defendant society within a period of two weeks if he so desires. The society shall dispose of the representation or complete the hearing if sought by the plaintiff within two weeks thereafter.

50. The operation of this order is stayed for a period of four weeks.

51. No costs.

52. Copy of the order be given dasti to the parties.

CS (OS) No. 1844/2008

53. List the matter before the Court for framing of issues on 14th January, 2010.

MANMOHAN SINGH, J.

OCTOBER 27, 2009
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