

O.A.No. 167 of 2015

and

APPLICATION No.2058 OF 2015

R. MAHADEVAN, J.

The Original application has been filed for an injunction restraining the 2nd to 22nd respondents from doing any act or discharging the functions as the office bearers of the 2nd respondent association.

2. Initially interim injunction was granted and notice was ordered to the respondents by this court. The respondents have filed a counter and also filed an application to vacate the interim order.

3. By consent both the applications are taken up together for hearing and disposal.

4. The brief facts of the case are as follows:-

a. The Applicant was elected as 'Honorary Treasurer' in the General Body Election of the 2nd respondent association held on 02.03.2014 for the period of four years, i.e. upto March, 2018. However, by a notice dated 08.08.2014, it was informed that the General Body meeting would be held on 31.08.2014 for electing the new office bearers to the 2nd respondent and in the election, the new

office bearers were elected, whereby the applicant was relieved of his post.

b. According to the applicant, the second election conducted within 6 months from the period of the first election is illegal and contrary to the regulations of the bye laws. Further, several irregularities in the second election were committed by the 23rd respondent in collusion with the other candidates.

c. According to the applicant, there was a tie to the post of president and as per the bye-laws, in such circumstances, only fresh election has to be conducted. Similarly, for other posts also, the candidates, who had secured highest votes, had not been declared as elected and hence the entire election is illegal.

d. According to the applicant, the earlier elected body which had conducted many tournaments and the schemes implemented will have to be continued till 2018.

e. The applicant had earlier filed a suit in O.S No 6445/14 on the file of the XIV Assistant Judge, City Civil Court, Chennai to declare the elections held on 31.08.2014 as void. The respondents have also filed an application in I.A No 1745 of 2015 to dismiss the suit as not maintainable.

f. After hearing the both the sides, the suit was dismissed directing the applicant to seek remedy under the Arbitration Act. Under these circumstances, the applicant has approached this court.

5. A counter has been filed by the respondents refuting the allegations of the applicant and contending that the election held on 02.03.2014 is only to elect the office bearers for the residual period of the year 2013-14.

6. According to the respondents, the applicant has no locus to file this application, challenging the election held on 31.08.2014 as he himself participated and lost in the election.

7. Further, the elections were conducted as per the bye-laws. In case of a tie, the chairman will have a right to cast his vote of his choice. Since one of the elected candidates himself has withdrawn from the contest, the result was declared on that basis. Further, in view of the fact that the candidates, who had secured highest votes, had themselves withdrawn from the contest, the next candidate was declared as elected.

8. According to the respondents, the 2nd respondent was being administered by an Adhoc Committee constituted by the 1st respondent. The constitution and the Statutes of the 1st and 2nd respondent were adopted and approved unanimously in the Extra Ordinary Congress of the 1st respondent held on 23.02.2014 and they came into effect from 1.04.2014. The election held on 02.03.2014 is only for the residual period of the year 2013-14 and the same was mentioned in the agenda itself.

9. According to the respondents, the present application is not

maintainable as no steps have been taken by the applicant to appoint an arbitrator. Under these circumstances, the respondents have pleaded that the activities of the 2nd respondent have been affected in view of the interim orders and hence the interim injunction may be vacated and the application may be dismissed.

10. The Learned Counsel for the applicant contended that there is no provision under the bye laws to conduct the election for the residual period and therefore the term of members elected on 02.03.2014 is valid till March 2018.

11. The learned counsel further contended that several irregularities have been committed by the 23rd respondent in declaring the results. According to the learned counsel, in case of tie to the election of the president, only fresh elections have to be conducted. Further, there is no question of withdrawing from the contest after the declaration of the results and only fresh election has to be conducted and the election of vice-president, Assistant Secretary and also the office bearers are not in accordance with law.

12. The Learned Counsel has also contended that despite trailing behind in the second election, there is no bar for the applicant to assail the entire elections and the provisions of Section 9 of the Arbitration and Conciliation Act can be invoked even before the initiation of the arbitration proceedings. The learned counsel has also placed reliance upon the

judgment of the Apex Court in 1999 (1) SCR 89 in support of his contention and sought for injunction.

13. Per contra, the Learned Counsel appearing for the respondents has contended that the applicant having contested and lost in the election cannot challenge the election and hence he has no locus to file this application. The learned counsel further contended that since the applicant had not handed over the accounts of the association, notice was sent to him and in view of the persistent non-compliance, he has been temporarily suspended from the Association by letter dated 14-10-2014.

14. The learned counsel also contended that the agenda of the earlier election would itself clearly disclose that it was only for the residual period of the year 2013-2014. The learned counsel also placing reliance upon the bye-laws of the 2nd respondent association contended that in case of tie to the post of president, the chairman can cast a vote to break the tie and also contended that after a tie, Mr.V.C.Praveen has graciously chosen to withdraw from the contest to the post of president, the 1st respondent was declared as elected to the post of President.

15. Similarly, though the candidates for the post of vice-president, Assistant Secretary and Executive members, had secured highest votes, since they themselves had withdrawn from the contest, the next candidates for the respective posts were declared as elected.

16. The learned counsel further submitted that the duly elected members are now unable to function because of the interim orders and that the entire activities of the 2nd respondent association has been paralysed and hence sought the dismissal of the application.

17. Heard both the learned counsels and perused the records.

18. Mr. Raja Kalifulla, the Learned Senior Counsel for the respondents has questioned the maintainability of the application filed by the applicant on two grounds.

a. The applicant cannot invoke the provisions of Section 9 without initiating the arbitration proceedings. *b.*
The applicant after having participated in the elections held on 31.03.2014, he cannot challenge the same.

19. In reply, the learned counsel for the applicant relying upon the judgment of the Apex Court has contended that even before the commencement of the Arbitration proceedings, the application is maintainable and that even an unsuccessful candidate can challenge the election.

20. At this juncture, it will be useful to refer to the provisions of Section 9 of the Arbitration and Conciliation Act, which reads as under:-

“9. Interim measures, etc. by Court - A party may, before or during

arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court :

(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely :

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the court to be just and convenient, and the Court shall have the same power for making order as it has for the purpose of, and in relation to, any proceedings before it."

21. In *Sundaram Finance Ltd. vs. Nepe India Ltd.* (1999 (1) SCR

89), the Hon'ble Apex Court has held as follows:

"When a party applies under Section 9 of the 1996 Act it is implicit that it accepts that there is a final and binding arbitration agreement in existence. It is also implicit that a dispute must have arisen which is referable to the arbitral tribunal. Section 9 further contemplates arbitration proceedings taking place between the parties. Mr. Subramaniam is, there-fore, right in submitting that when an application under Section 9 is filed before the commencement of the arbitral proceedings there has to be manifest intention

on the part of the applicant to take recourse to the arbitral proceedings if, at the time when the application under Section 9 is filed, the proceedings have not commenced under Section 21 of the 1996 Act. In order to give full effect to the words "before or during arbitral proceedings" occurring in Section 9 it would not be necessary that a notice invoking the arbitration clause must be issued to the opposite party before an application under Section 9 can be filed. The issuance of a notice may, in a given case, be sufficient to establish the manifest intention to have the dispute referred to arbitral tribunal, but a situation may so demand that a party may choose to apply under Section 9 for an interim measure even before issuing a notice contemplated by Section 21 of the said Act. If an application is so made the Court will first have to be satisfied that there exists a valid arbitration agreement and the applicant intends to take the dispute to arbitration. Once it is so satisfied the Court will have the jurisdiction to pass orders under Section 9 giving such interim protection as the facts and circumstances warrant. While passing such an order and in order to ensure that effective steps are taken to commence the arbitral proceedings, the Court while exercising jurisdiction under Section 9 can pass conditional order to put the applicant to such terms as it may deem fit with a view to see that effective steps are taken by the applicant for commencing the arbitral proceedings. What is apparent, however, is that the Court is not debarred from dealing with an application under Section 9 merely because no notice has been issued under Section 21 of the 1996 Act."

22. From a reading of the above provision and also the law laid down by the Apex court, it is clear that the application filed under section 9 is maintainable even before the initiation of the Arbitration proceedings. It is also clear from the judgment of the Apex Court that the party approaching the court must have a manifest intention to initiate the arbitration proceedings. It is settled law now that if the applicant does not initiate

arbitration proceedings within a reasonable time, he is not entitled to the interim protection under section 9. Apparently, it is clear that the applicant has not shown any interest or taken any steps to initiate arbitration proceedings. Even no averment has been made by the applicant either in the affidavit filed in support of the original application or in the reply affidavit regarding the steps taken by him to initiate arbitration proceedings.

23. The next point arises for consideration is the locus standii of the applicant to challenge the election held on 31.08.2014.

24. The applicant was elected as a treasurer on 02.03.2014. On 2.3.2014, the Annual General Body Meeting of the Chennai Foot Ball Association was held and in the said meeting, certain programmes were dealt with and the agenda No.6 reads as under:-

“6. Election of the Office Bearers and EC Members for the residual period of the year 2013-14”

25. From the agenda No.6, it is clear that the period of the office bearers was only for the residual period of the year 2013-14. The applicant had accepted the same, participated in the elections held on 02.03.2014 and continued till the fresh

elections held on 31.08.2014. The notice and the agenda dated 08.08.2014 proposing to conduct the elections on 31.08.2014 clearly indicates the intention to elect the regular body.

26. As per Article 23 of the bye-laws of the 2nd respondent association, the term of office of the office-bearers shall be synchronized with that of the 1st respondent. Therefore, it cannot be said that there cannot be an election for the residual period.

27. The applicant has received the notice, dated 8.8.2014 and contested in the election to the post of treasurer which is evident from the List of valid nominations available at page 36 of the typed set of papers.

28. Apparently, the applicant has lost in the elections. This court is unable to accept the contention of the learned counsel for the applicant even after losing in the election, he can question the same. This court is of the view that an unsuccessful candidate is not entitled to challenge the election after having participated in the same, unless there is any violation of bye-laws or procedure or any irregularities. The right of an unsuccessful candidate is very limited. He can question only the procedural violations during election and declaration of the results and not the entire election. Therefore, this court is of the opinion that the applicant will not have any locus to question the validity of the election held on 31.08.2014.

29. Admittedly, some of

the candidates themselves have withdrawn from the election after declaring the results to enable the other party to get elected. From the materials produced, this court is unable to find any provision under the bye-laws of the 1st and 2nd respondent association permitting the successful candidate to withdraw from the elections after the results enabling the next candidate to get elected. The validity of such election has to be testified only by the Arbitral Tribunal.

30. This court has already held that the applicant has not shown any intention or interest to take steps for getting the Tribunal Constituted and that the applicant has no locus to contend that the election held on 31.08.2014 is void ab initio.

31. Considering the above facts and circumstances of the case and also considering the fact that in the absence of an adhoc committee to run the association, the activities of the association would be paralysed and therefore, the interim order already granted is vacated and the original application is dismissed. The applicant is directed to take steps for the constitution of the Tribunal and approach the Tribunal under Section 17 of the Arbitration and Conciliation Act, 1996 for an appropriate remedy.

In the result, while allowing application in A.No.2058 of 2015, the original application in O.A 167 of 2015 is dismissed without costs.

Index : Yes/No.

Internet : Yes/No.

R. MAHADEVAN, J.

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Pre-Delivery Order in

O.A 167 of 2015

and

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Date : 30.04.2015