

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-07-2015

(Orders reserved on 06-07-2015)

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

O.A.No.411 of 2015 and Application Nos.4053 and 2853 of
2015
in
C.S.No.309 of 2015

1. V.Arulkumar
2. S.Palpandian
3. V.Balamurugan

.. Applicants in O.A.No.411 of 2015,
plaintiffs in C.S.No.309 of 2015 and
respondents 1 to 3 in A.Nos.2853
and 4053 of 2015

Vs.

1. Tamil Nadu Government Nurses' Association
(Government Recognised),
Rep. by its President - Mrs.P.Arivukan,
at Government Kilpauk Medical College and Hospital,
Kilpauk, Chennai-600 010.
2. Mrs.P.Arivukan,
President,
Tamil Nadu Government Nurses' Association,
working as Nursing Superintendent Grade-I,
at Government Kilpauk Medical College and Hospital,
Kilpauk, Chennai-600 010.
3. Mrs.T.Leelavathi,
Secretary,
Tamil Nadu Government Nurses' Association,
working as Nursing Superintendent Grade-II,
at Annal Gandhi Memorial Government Hospital,
Trichy District.

4. Mrs.R.Kanakalatha,
Treasurer,
Tamil Nadu Government Nurses' Association,
working as Nursing Superintendent Grade-II,
Government Stanly Medical College and Hospital,
Chennai.

.. Applicants in A.No.2853 of 2015,
respondents 1 to 4 in O.A.No.411 of 2015
defendants 1 to 4 in C.S.No.309 of 2015,
respondents 4 to 7 in A.No.4053 of 2015

5. Mrs.Avudaithai,
Executive Committee member-cum-Election Officer,
working as Nursing Superintendent, Grade-II,
at Government Royapettah Hospital,
Royapettah, Chennai-600 014.

6. Mrs.Preetha Begam,
Propaganda Secretary-cum-Election Officer,
working as Staff Nurse,
at Annal Gandhi Memorial Government Hospital,
Trichy, Trichy District.

7. Mr.Saleem Bhatsha,
Election Officer,
working as Staff Nurse at Government Hospital,
Kumbakonam, Thanjavur District.

8. Mrs.Reetta,
Election Officer,
working as Staff Nurse at Coimbatore Government
Medical College and Hospital, Coimbatore District.

9. Mr.Pitchandi,
Election Officer,
working as Staff Nurse at Government Vellore
Medical College and Hospital, Vellore District.

.. Respondents 5 to 9 in O.A.No.411 of 2015,
defendants 5 to 9 in C.S.No.309 of 2015 and
respondents 8 to 12 in A.No.4053
of 2015

1. K.Valarmathy
2. K.Sakthivel
3. S.Kalaiyammal
4. M.Samuvel

(Defendants 10 to 13 were impleaded
as per order dated 24.04.2015
in A.No.2997 of 2015)

14. T.Jeyalakshmi

15. C.Geetha

16. B.Manikandan

(Defendants 14 to 16

impleaded as per order dated 01.07.2015

in A.No.4274 of 2015)

.. Defendants 14 to 16 in

C.S.No.309 of 2015

Original Application No.411 of 2015 is filed and the Judge's Summons issued under Order 14 Rule 8 of the Original Side Rules of this Court, read with Order 39 Rules 1 and 2 of the Code of Civil Procedure, to grant an ad-interim injunction restraining the respondents and their men from in any manner conducting the elections on 18.04.2015 or any other date without framing the Election Rules and as per the registered bye-laws of the Association, pending disposal of the above suit.

Application No.2853 of 2015 is filed and the Judge's Summons issued under Order 14 Rule 8 of the Original Side Rules of this Court, read with Section 151 of the Code of Civil Procedure, to vacate the interim injunction granted on 13.04.2015 in O.A.No.411 of 2015 in C.S.No.309 of 2015 and dismiss the suit.

Application No.4053 of 2015 is filed and the Judge's Summons issued under Order 14 Rule 8 of the Original Side Rules of this Court, read with Section 151 of the Code of Civil Procedure, read with Order 39 Rule 4 of the Code of Civil Procedure, to vacate the interim injunction granted on 17.04.2015 read with order in A.No.2853 of 2015 in C.S.No.309 of 2015.

Civil Suit No.309 of 2015 is numbered and the amended plaint is filed under Order 7 Rule 1 of the Code of Civil Procedure read with Order 4 Rule 1 of the Original Side Rules of this Court, praying to pass a judgment and decree against the defendants as follows:

(i) for a mandatory direction, directing the defendants 1 to 4 herein to convene the General Body Meeting of the Tamil Nadu Government Nurses' Association to frame the Election Rules to conduct the elections as per the registered Bye-laws for the State Level Office Bearers posts of the first defendant-Association;

(ii) for permanent injunction restraining the defendants herein from conducting the elections on 18.04.2015 or any other date without framing the Election Rules and as per the registered Bye-laws of the

<https://hcservices.eco.nic.in/govt/hcservices/>, and

(iii) to direct the defendants to pay the costs of the suit.

For Applicants in O.A.No.411 of 2015,
 plaintiffs in C.S.No.309 of 2015 and
 respondents 1 to 3 in A.Nos.2853 and 4053 of 2015:
 Mr.S.Parthasarathy, Senior Counsel
 for M/s.K.Premkumar

For Respondents in O.A.No.411 of 2015,
 defendants 1 to 8 in C.S.No.309 of 2015 and
 respondents 4 to 8 in A.No.2853 of 2015
 and respondents 8 to 12 in A.No.4053 of 2015:
 Mr.S.Saravanakumar for D1 to D4
 Mr.Bharatha Chakravarthy for
 Mr.K.Srinivasamurthy for D5 to D8

For applicants in A.No.4053 of 2015: Mr.N.Manokaran

For applicants in A.No.2853 of 2015: Mr.S.Saravanakumar

For Defendants 14 to 16: Mr.V.Raghavachari

ORDER

The plaintiffs are the applicants in O.A.No.411 of 2015. They have filed the above suit for a mandatory direction, directing the defendants 1 to 4 herein to convene the General Body Meeting of the Tamil Nadu Government Nurses' Association to frame the Election Rules to conduct the elections as per the registered Bye-laws for the State Level Office Bearers posts of the first defendant-Association, and for permanent injunction restraining the defendants herein from conducting the elections on 18.04.2015 or any other date without framing the Election Rules and as per the registered Bye-laws of the Association.

2. Pending disposal of the above said suit, the plaintiffs have filed O.A.No.411 of 2015 for ad-interim injunction restraining the respondents and their men from in any manner conducting the elections on 18.04.2015 or any other date without framing the Election Rules and as per the registered bye-laws of the Association.

3. The case of the applicants/plaintiffs, in short, is as follows:

(a) The nurses working under the State Government formed an Association called "Madras Government Nurses Association" and registered the same with an object of development and improvement of working conditions of the nurses. The Association got its recognition from the Tamil Nadu Government. The name of the Association was subsequently changed as "Tamil Nadu Nurses Government Association". There are more than 10,000 members in the said Association working all over the State of Tamil Nadu in various Government Medical Colleges, Government Hospitals and Primary Health Centres, apart from the State run ESI Hospitals.

(b) The election for the office bearers of the Association was lastly conducted on 18.02.2006, in which the respondents 2 to 4 were elected as President, Secretary and Treasurer respectively. As per Bye-law No.11, the election shall be conducted once in three years. The present office bearers and the Executive Committee members

deliberately failed to convene a General Body Meeting from the year 2013 onwards. Even for the Executive Meeting and General Body Meeting conducted on 19.03.2015 in Chennai, no prior notice was sent to the members and no Agenda has been notified. Further, the first applicant participated in the said meeting after getting the intimation from one Executive Committee member. In that meeting, the respondents 2 to 4/defendants 2 to 4 unilaterally decided and appointed the respondents 5 to 9/defendants 5 to 9 as the Election Officers to conduct the elections for the posts of State Level office bearers on 18.04.2015. Only 50 members participated in the meeting held on 19.03.2015. Without maintaining the Members' Registers, without publishing the eligible voters' list and without proper notice, the Election Officers fixed the election schedule as follows:

Nomination starts : 23.03.2015
 Nomination ends : 31.03.2015
 Scrutiny and withdrawal : 01.04.2015 and 02.04.2015
 Final list of candidates : 02.04.2015
 Electioneering period : 03.04.2015 to 16.04.2015
 Date of polling : 18.04.2015
 Date of publication of results : 20.04.2015

(c) There are several irregularities and illegalities committed in the functioning of the first respondent-

Association by the respondents 2 to 4/defendants 2 to 4.

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The first applicant submitted a petition on 27.03.2015 to

the respondents 2 to 9, requesting them to run the Association and conduct the elections as per the Bye-laws of the Association. Another petition was submitted by the applicants on 28.03.2015 to all the respondents, requesting for furnishing a copy of the Bye-laws of the Association, list of members of the Association and the list of eligible voters. However, the respondents are proceeding with the process of conducting the elections detrimental to the interest of 10,000 members of the Association. As per Bye-law No.11, the polling of votes shall be through post only. The Returning Officers/Executive Officer shall call for the nominations one month earlier from the date of actual election. However, the present election schedule does not confirm the above requirement of Bye-law.

4. This Court, by order dated 13.04.2015, granted an ex-parte order of interim injunction for a period of two weeks. After notice, the respondents 1 to 4/defendants 1 to 4 filed their counter affidavit along with A.No.2853 of 2015 for vacating the above said interim injunction granted on 13.04.2015 in O.A.No.411 of 2015 and to dismiss the suit.

5. The contentions of the respondents 1 to 4 are as follows:

(a) The suit is not maintainable, as the same was filed with vague allegations.

(b) The plaintiffs have not filed the suit on behalf of the other members of the first defendant-Association and

they have not pleaded as to how they would be aggrieved if the election is conducted as scheduled. The election process commenced on 23.08.2014 itself, when it was decided to hold the election in March 2015. In the meeting held on 19.03.2015, the election was announced and the process commenced. All arrangements were done and the final list of candidates was announced on 02.04.2015. While so, in the middle of the election process, the plaintiffs have filed the suit, which is not maintainable.

(c) The quorum for the General Body was fixed as 100 and the voting would be through post, in view of the fact that members of the Association are doing important service to the society by attending the poor patients in the Government Hospitals and hence, it would be impossible for all the members to assemble in one place on a particular day.

(d) In the meeting held on 19.03.2015, 133 members participated, including the first plaintiff. It was unanimously decided in the said meeting to hold the elections on 18.04.2015 and the Election Commissioners were nominated for conducting the elections. The schedule of election is as follows:

Nomination starts	: 23.03.2015
Nomination ends	: 31.03.2015
Scrutiny and withdrawal	: 01.04.2015 and 02.04.2015
Final list of candidates	: 02.04.2015
Electioneering period	: 03.04.2015 to 16.04.2015

Date of polling : 18.04.2015

Date of publication of results : 20.04.2015

(e) Sufficient time was given to the members for filing their nominations and canvassing. None of the contestants made any grievance. The Election Commissioners have taken charges of the entire matter and the election process has commenced on 23.03.2015. The eligible voters' list was released on 10.03.2015 itself. Since the election process has already commenced, the letters sent by the plaintiffs were not replied.

(f) As the members are spread throughout Tamil Nadu and are working in various places, the practice followed is to pass on the information regarding the meetings over phone to the respective Districts and branch office bearers and through them, the message is communicated to the members. Almost all the election work was completed and the ballot papers were also sent and the polling was scheduled on 18.04.2015. The final eligible voters' list was made ready on 08.03.2015 itself and only after that, the date of election was announced.

(g) In the meeting held on 19.03.2015, 133 members participated and therefore, there was enough quorum. The fact that the first plaintiff attended the meeting held on 19.03.2015 shows that the present method of communication

6. This Court, pending the hearing of these applications, by order dated 17.04.2015 in A.No.2853 of 2015, modified the order passed in O.A.No.411 of 2015 and permitted the election to go on 18.04.2015, however by directing that the results of the election shall not be declared until further orders from this Court. It was further directed that the present office bearers of the first defendant-Association shall continue in the office. Thereafter, the matter was adjourned for further hearing. Thus, in the meantime, the election was conducted on 18.04.2015 and the results were with-held.

7. The defendants 10 to 13 filed counter affidavit along with A.No.4053 of 2015 for vacating the said interim order granted on 17.04.2015, contending as follows:

The present office bearers are holding the office from 2006 onwards. Though the election was due in 2009, since there were certain on-going issues, in the General Body meeting conducted in 2009, it was decided to continue the existing office bearers of the Association. However, on 23.8.2014, it was decided that that the election date shall be announced in the month of March 2015. Therefore, these defendants 10 to 13 decided to contest in the election and filed their nominations. Out of total 10,674 eligible voters in the first defendant-Association, 9,891 voters cast their votes. When once the election process has

commenced, no suit be entertained or interim order be granted to stall the election process. The plaintiffs are not even the contestants. The election process has already commenced on 19.03.2015 itself.

8. The Election Officers, who are arrayed as respondents 5 to 8/defendants 5 to 8, have filed their counter affidavit, stating as follows:

(a) The applicants/plaintiffs have filed the above suit by making baseless and untenable allegations against the Election Officers. When once the Election Notification is issued, the suit cannot be filed, as the result of the election can be challenged only by way of Election Petition. The plaintiffs are not the contestants and therefore, they are not the aggrieved persons.

(b) On 19.03.2015, the Central Executive Committee and the General Body declared the election process and the dates, and the General Body was given the responsibility of conducting the election to five Election Officers and four Executive Committee members. The date of election was fixed as 18.04.2015 with one month gap as per Bye-laws of the Association. The Election Officers circulated pamphlets regarding the election and the do's and dont's in the election. The other Election Officers were not made as parties, since they are close friends of the first plaintiff.

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(c) As per the decision of the General Body, the

election was conducted and the final voters' list consisted of 10,674 voters. On 02.04.2015, the final contestants' list was released. 11,000 ballot papers were ordered to be printed. The voters' list was split into two parts on 08.04.2015 since the members are voluminous. As per Bye-law No.11 of the first defendant-Association, the ballot papers were sent to 84 polling booths. The voters' list of the respective booths was also sent to the booths. The ballot papers were sent to the respective branch based on the number of members who are entitled to vote in the respective branches in sealed covers through eight messengers and confirmation letters were also obtained from the respective branches for receipt of the ballot papers.

(d) On 18.04.2015, the election was conducted and the ballot papers were issued to the voters after obtaining their signatures against their names in the voters' list. Totally, 9,889 votes were polled. The respective booth agents sealed the ballot boxes and all the boxes were received and kept in the premises of Kilpauk Medical College at Chennai.

(e) The counting commenced on 25.04.2015 and concluded on 27.04.2015. The entire counting was videographed. All the Election Officers/members, candidates and booth agents of the candidates were present in the counting place and they were kept at a distance in order to avoid the candidates knowing the number of votes they secured, as the

results are to be with-held as per the interim order of this Court. The total votes secured by the candidates are kept in a sealed cover. The entire election was held in a proper, transparent and peaceful manner.

9. Mr.S.Parthasarathy, learned Senior Counsel appearing for the applicants/plaintiffs submitted as follows:

(a) The election should be conducted as per the Bye-laws of the first defendant-Association. Bye-law No.11 of the Association contemplates that the polling of votes shall only be through post. However, in this case, the polling took place in booths. Under Bye-law No.11, the Returning Officers shall call for the nominations one month earlier from the date of actual election. Here, the nominations were called for on 23.03.2015 and the election was scheduled on 18.04.2015. Therefore, there is no clear one month interval in between those two dates of events. Thus, the entire process of election is illegal, as it is not in accordance with the mandatory Bye-laws of the first defendant-Association.

(b) The members were not issued with election notice. Even in respect of the General Body meeting held on 19.03.2015, no written notice was issued to any member, more particularly, indicating the Agenda regarding the election.

(c) As per Bye-law No.11, the ballot papers shall be submitted one week prior to the election and as per Bye-law No.12, the voters shall send their ballot papers through post directly to the Returning Officers. The above procedures are not followed, as admitted in the counter affidavit filed by the respondents. Ballot papers were received in the stations/places at the Government Hospitals at Salem, Vellore, Ambur (Vellore), Vaniyambadi (Vellore), Thirupattur (Vellore), Gudiyatham (Vellore), Vellore--GPH Penlant Hospital, Vellore ESI Hospital, Vellore--Wallajah Hospital, Dindugal, Arni, Dharmapuri and Pudukkottai, only on 19.04.2015, i.e. one day after the elections, as could be seen from the proceedings of the Election Officers, found in page 30 of the typed set of papers filed by the Election Officers (defendants 5 to 8).

(d) Bye-law No.16 of the Association deals with the manner in which the meeting should be conducted. One month's notice is necessary for any General Body meeting. In this case, no such notice was issued.

(e) Though the plaintiffs have raised a ground with regard to the quorum in the meetings, they are not pressing the same, as it is seen that the required quorum was there in the meeting conducted on 19.03.2015.

(f) Even though the respondents 1 to 4/defendants 1 to 4 stated in the counter affidavit that the voters' list was made ready only on 08.03.2015, from the proceedings of the

Election Officers, it could be seen that such list was made ready only on 08.04.2015.

(g) The Civil Suit filed is maintainable, as the subject matter "Election" is different from the Election conducted under the provisions of the Representation of People's Act.

(h) In this case, the Bye-laws are the contract and therefore, the parties to the Bye-laws are bound by such terms of the contract and consequently, they should follow the procedures contemplated under the Bye-laws and conduct the election accordingly. If there is any violation, the members of the Association are entitled to challenge the same by way of filing the present suit.

(i) On the question of maintainability of a Civil Suit, the decision of this Court reported in 2001 (3) CTC 486 (R.Karuppan, Advocate Vs. P.K.Rajagopal, Secretary, Advocates' Association, High Court) is relied on by him.

10. Mr.V.Raghavachari, learned counsel appearing for the defendants 14 to 16 (respective respondents in the applications) supported the case of the plaintiffs and after adopting the arguments advanced by the learned Senior Counsel appearing for the plaintiffs, he made his further submission that when there is a bar in filing of a suit in respect of the elections conducted under the Representation of People Act, no such bar is there in the present case,

either in the Bye-laws or in the statutes, and therefore, the present suit is maintainable. In support of such contention, he relied on the following decisions:

(i) 1991 Supp (2) SCC 36 (Nagri Pracharini Sabha Vs. Vth Addl. District and Sessions Judge) and

(ii) 2008 (6) Mh.L.J. 391 = MANU/MH/1089/2008 (Bombay High Court-Nagpur Bench) (Krishna Ganpatrao Kamdi and others Vs. Liladhar S/o Laxman Pathode and others).

11. Mr.S.Saravanakumar, learned counsel appearing for the defendants 1 to 4 (respective respondents in the applications) submitted as follows:

The suit itself is not maintainable. The suit prayer cannot be granted, as the Executive Committee of the first defendant-Association is the competent body to appoint the Returning Officers and not the General Body of the first defendant-Association, as sought for in the prayer in the suit. The notice regarding the meeting held on 19.03.2015 was intimated through cell phones to all branches of the Association, which in turn informed the respective members orally. The Election Notification was issued on 19.03.2015 itself. Therefore, there is clear 30 days' interval, as calling for the nominations starts from the date of issuance of the Election Notification. The ballot papers were prepared and made ready only on 10.04.2015 and not on 10.03.2015 as stated in the counter affidavit filed by the

defendants 1 to 4. It was a typographical mistake. The method of postal votes was not followed in any election. Only booth polling election is conducted and such procedure is accepted by all the members. There is nothing wrong in conducting booth polls. The plaintiffs have accepted such procedure and having cast their vote, they cannot now challenge the same. In every branch, one Election Officer was appointed. There is no averment as if any fraud is committed in the election process. As per Bye-law No.27, the Central Executive Committee is empowered to make the emergency addition and amendments to the Bye-laws. When once the election process is commenced, only Election Petition is maintainable, that too, after the declaration of election results. In support of these contentions, learned counsel for the defendants 1 to 4 relied on the following decisions:

(i) 2008 (11) SCC 1 (Mandali Ranganna Vs. T.Ramachandra);

(ii) 2010 (1) CTC 62 (Madras High Court) (K.Periasamy Gounder Vs. Kohari Industrial Corporation Ltd.);

(iii) 2005 (4) LW 605 (Division Bench of Madras High Court) (C.M.S.Evangelical Suvi David Memorial Hr. Sec. School Committee Vs. The District Registrar, Cheranmahadevi and others);

(iv) 2010 (5) CTC 481 (Madras High Court-Madurai Bench) (The Tamil Nadu Evangelical Lutheran Church Vs.

Daniel Shanmugam) and

(v) 2001 (8) SCC 509 (Shri Sant Sandguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha Vs. State of Maharashtra) and

(vi) AIR 2014 Madras 34 = 2014 (2) LW 838 = MANU/TN/2651/2013 (Medical Council of India, Through its Chairman Vs. The Registrar/Returning Officer, Tamil Nadu Dr. M.G.R. Medical University, Rep. by its Registrar, Tamil Nadu Dr. M.G.R. Medical University, Rep. By its Registrar, Dr. L.P. Thangavelu and The Secretary to Government of India, Ministry of Health and Welfare).

12. Mr.N.Manokaran, learned counsel appearing for the defendants 10 to 13 submitted as follows:

These defendants 10 to 13 are the candidates who participated in the election. The prayer in the suit is not maintainable. The suit was filed based on two grounds, namely (i) there was no quorum in the meeting held on 19.03.2015, and (ii) Bye-law No.11 is violated. Except these two grounds, no other grounds are raised by way of pleadings. Therefore, any submission made beyond the pleadings, cannot be considered. Insofar as the ground raised with regard to Bye-law No.11 is concerned, it is to be noted that the election process commenced on 19.03.2015 itself and therefore, one month's time gap was very much available. Even otherwise, no prejudice is caused to the

voters. 90% of the voters have polled including the plaintiffs. Having participated in the election, the plaintiffs cannot challenge the same. In an Election Suit, the allegation must be very specific, clear and cogent. In this case, except the above two contentions/grounds, no other allegation is made. The suit is highly premature, as filing of the Election Petition is the only course of action, if there is any grievance. The administration of the first defendant-Association will be paralysed, if the results are not declared and the elected members are not permitted to function, since the election is conducted after nearly nine years. In support of these submissions, the learned counsel for the defendants 10 to 13 relied on the following decisions:

(i) 2010 (9) SCC 712 (M.Chandra Vs. M.Thangamuthu);

(ii) AIR 1978 SC 851 = 1978 (1) SCC 405 (Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others);

(iii) 2013 (5) SCC 470 (Rajasthan State Industrial Development and Investment Corpn. Vs. Diamond and Gem Development Corpn. Ltd.) and

(iv) 2011 (10) SCC 420 (Cauvery Coffee Traders Vs. Hornor Resources (International) Co. Ltd).

13. Mr.Bharathachakravarthi, learned counsel representing Mr.K.Srinivasamurthy, learned counsel appearing for the defendants 5 to 8, who are the Election

Officers, submitted as follows:

Calling for nominations commenced on 19.03.2015 itself and only filing of nominations was to take place on 23.03.2015. The entire election process was conducted in a just and proper manner with transparency and there is no illegality or irregularity at any point of time. No complaint of mal-practice was ever made. The polling through postal vote had been changed to booth polling by implied conduct of the parties and the same cannot be questioned. In support of these submissions, the learned counsel appearing for the defendants 5 to 8 relied on the following decisions:

- (i) 2009 (14) SCC 318 (M.J.Jacob Vs. A.Narayanan);
 - (ii) 2010 (12) SCC 458 (H.R.Basavaraj Vs. Canara Bank)
- and
- (iii) 1996 (1) CLT 83 (Delhi High Court) (Jagjit Singh Sangwan Vs. Union of India and others).

14. Heard both sides and perused the respective pleadings and the materials placed before this Court for the purpose of considering these interlocutory applications.

15. The plaintiffs have come forward with the present suit by challenging the proposed election, scheduled on 18.04.2015, on the ground that the entire election process/schedule is against the mandatory requirements contemplated under the Bye-laws of the first defendant-

Association.

16. Before I go into the specific contention of the plaintiffs in respect of the relevant Bye-laws of the first defendant-Association, which are said to have been violated, I would like to decide the preliminary objection raised by the contesting respondents/defendants, namely that the present suit is not maintainable and only an Election Petition, that too after declaration of the results, is the proper course of action. It is their further contention that the plaintiffs not being the contesting candidates, are not entitled to challenge the election process.

17. To the above said preliminary objection raised by the contesting respondents/defendants, it is contended on behalf of the applicants/plaintiffs that as the subject matter "Election" is governed by the Bye-laws of the first defendant-Association, the challenge by way of filing a suit, can be made, as there is no bar in the Bye-laws in doing so. It is further contended that the election contemplated under the Representation of People Act, 1950/1951, is totally a different one and therefore, the provisions contemplated therein are not applicable to the present subject matter "Election".

18. It is not in dispute that the first respondent/first defendant-Association is governed by the "Constitution" of the "Madras Government Nurses'

Association, Madras" (now called as "Tamil Nadu Government Nurses' Association"--Government Recognised), which according to both parties, is the Bye-laws. There is no dispute to the fact that Bye-law No.11 of the first defendant-Association deals with "Elections" and Bye-law No.12 deals with "Special Rules" regarding the State Executive Election, Branch Executive Election and Election of the Central Executive and Branch Executive Committees. For proper appreciation of the above said Bye-laws, they are extracted hereunder:

"11. Elections:

(1) General Rules:- All members have equal rights to vote, elect and to be elected. Elections shall be conducted once in 3 years. Elections to the Branch executives shall be held once in two years. Polling of votes shall be through post only. Elections in respect of all office bearers shall be conducted by Returning Officers to be appointed by the State Executive Committee.

The returning officers shall call for nominations one month earlier from the date of actual election. Scrutiny, withdrawals and invalidation etc. of nomination papers shall be made 15 days prior to the election date. Ballot papers shall be distributed one week prior to the date of election. In case of equality of votes the President of the Association in the case of State elections or the Vice-President in the case of the Branch elections shall exercise a casting vote in addition to the general vote. The results of the elections shall be announced within two days from the closure of elections.

All elected office bearers shall hold office till the next election. All interim vacancies in the office bearerships shall be filled by the Executive Committees, by electing a member or members as the case may be, from among their members. All vacancies in the Executive Committee shall be filled up by appointment by the President in the case of the Central Executive Committee or the Vice-President in the case of the Branch

Executive Committee from among the ordinary members. A bulletin on the conduct and results of the election shall be published and circulated among the members of the association by the incoming President of Association.

All retiring members are eligible for re-election. There shall be no restrictions as regards a member of a Branch Executive seeking election to the State Executive Committee and if elected shall retain both seats.

12. Special Rules:

(a) State Executive Election: Election of the President, Vice-President, General Secretary and Treasurers of the State Executive Committee shall be made from among the resident members of the city. All members of the Association shall be eligible to vote for this election. Voters shall send their ballot papers through post direct to the Returning Officer. The two Assistant Secretaries shall be chosen by the General Secretary with the concurrence of all office bearers of the State.

(b) Branch Executive Election: Election of the Vice-President, Secretary and Treasurer of the Branch shall be made from among the resident members of the District headquarters of the branch concerned. Only members of the concerned branch shall be eligible to cast their votes for this election.

(c) Election of the Central Executive and Branch Executive Committee:

The General Body of the branch shall elect its quota of members to the Central Executive Committee and forward the names of the members so elected to the President of the Central Executive. The Branch Executive Committee also shall be elected in this General Body Meeting.

The City quota of members to the Central Executive Committee shall be elected at the General Body of the Association.

The President of the Central Executive Committee shall have the power to nominate 5 additional members to the Central Executive Committee and two additional members to each of the branch Executive Committees."

(emphasis supplied)

19. A perusal of the abovesaid Bye-laws shows that the following procedures are mandatory:

(i) Polling of votes shall be through post only.

(ii) The Returning Officers shall call for nominations one month earlier from the date of actual election.

(iii) The ballot papers shall be distributed one week prior to the date of election.

(iv) All members of the Association shall be eligible to vote for the election to the post of President, Vice-President, General Secretary and Treasurer of the State Executive Committee.

(v) The voters shall send their ballot papers through post directly to the Returning Officer.

20. Thus, it is evident that the elections have to be conducted only as per the above mandatory procedures and not otherwise. A further perusal of the above said Bye-laws shows that there is no provision prohibiting the members or voters from challenging the elections by filing a suit. In other words, it is not contemplated in the Bye-laws that such elections can be challenged only by way of Election Petition and not otherwise. If the process of elections is by certain procedures which are outside the scope of the Bye-laws and against the specific mandatory procedures contemplated therein for conducting the elections, certainly, the same can be challenged before the Court of

Law. It can be at the instance of a voter, even if he is not a contesting candidate. It is needless to say that the voter is a member and not a stranger of an Association and thus, he has every right to protect the interest of the Association and see that the election is conducted as per the Bye-laws of such Association. If the contesting candidate(s) has/have chosen to keep silent, for various reasons or for any extraneous consideration, it does not mean that such procedures followed in the process of elections, cannot be challenged by any other person, namely the voters/members of the Association. Equally, the Court cannot be a mute spectator to such illegal process of elections and give its seal of approval, merely because the challenge was not made by a contesting candidate. While expressing this view, I am fully conscious of the well-settled principle that the challenge to the elections is not a common law remedy and it has to be specifically provided under the statute. Further, the right to contest the election or to question the election by means of the Election Petition is neither common law nor fundamental right and instead, it is a statutory right regulated by the statutory provisions.

21. At the same time, this Court is also reminded of the fact that the election is a symbol of Democracy and the same has to be conducted strictly in accordance with the procedures established by law in a fair, transparent and

unbiased manner. There cannot be any compromise on the mandatory and essential procedures in conducting the elections. Only when those procedures are strictly followed, it could be said that the Democratic way of electing people, has been achieved. If there are any deviations, it should be viewed seriously, as the same cannot get the seal of approval from a Court of Law, automatically.

22. In this case, I have already pointed out that the Bye-laws of the first defendant-Association are totally silent about the manner in which the elections have to be challenged. In other words, there is no prohibition for challenge of the elections before the Court of Law by invoking the common law remedy. Likewise, the Tamil Nadu Societies Registration Act, 1975, more particularly, Section 36 therein does not empower the Registrar of Societies to go into the validity of the election and thus, the election of the office bearers of the Society cannot be challenged before the Registrar under such provision of law. At this juncture, a Division Bench decision of this Court reported in 2005 (1) CTC 399 (Thamil Arasan.S. Vs. R.Narayanan) is useful to be referred to. In paragraphs 3 and 4 of the said decision, the Division Bench has observed as follows:

"3. When Dr.G.Krishnamurthy, learned counsel appearing for the first respondent was asked as to under which provision the impugned order was passed, he has stated that the impugned order was

passed under Section 36 of the Tamil Nadu Societies Registration Act, 1975. Section 36(1) of the said Act states that,

"the Registrar may, of his own motion or on the application of a majority of the members of the committee of a registered society or on the application of not less than one-third of the members of that registered society, or, if so moved by the District Collector hold or direct some person authorised by the Registrar by order in writing in this behalf to hold, an enquiry, into the constitution, working and financial condition of that registered society."

4. A perusal of the said provision shows that this provision does not permit any one to challenge the validity of an election held for the office bearers of the society, but only permits the Registrar to inquire into the constitution, working and financial condition of the society. In our opinion, since there is no specific provision permitting the challenge of an election to the society, the only remedy for challenging such election is by means of a civil suit."

(emphasis supplied)

23. Further, a learned Judge of this Court, while considering the scope of the Tamil Nadu Societies Registration Act, 1975, observed in paragraph 17 of the decision reported in 2001 (3) CTC 486 (R.Karuppan, Advocate Vs. P.K.Rajagopal, Secretary, Advocates' Association, High Court) (which was relied on by the learned Senior Counsel appearing for the applicants/plaintiffs), as follows:

"17. Point No.3: The second defendant argued that once election has started, it cannot be stalled by the Courts. This argument is based upon the procedures and practices as well as the rules govern the general elections. He argued that just like the process of general elections of

Parliament or the State Legislative Assembly cannot be stalled or stopped by any proceedings before the Court, the election to the association also cannot be stalled. This argument of the second defendant is not acceptable. The General Election for Parliament and the State Legislative Assembly are governed by the Representation of People Act and Rules. It cannot be extended to the Association registered under the Societies Registration Act. These associations are undoubtedly governed only by the Societies Registration Act and rules and nothing else. Therefore, in the absence of any provision excluding the jurisdiction of Courts, this argument is not acceptable and hence, rejected."

24. Mr.V.Raghavachari, learned counsel appearing for the defendants 14 to 16 (respective respondents in the applications) and supporting the case of the applicants/plaintiffs, relied on the decision of the Supreme Court reported in 1991 Supp (2) SCC 36 (Nagri Pracharini Sabha Vs. Vth Addl. District and Sessions Judge), to contend that there is no bar for the plaintiffs to file the present suit. In the said decision, the scope of Section 25 of the Societies Registration Act came up for consideration, which deals with the disputes regarding election of office bearers. The Apex Court observed in paragraph 4 therein as follows:

"4. We are of the view that provisions of Section 23 are confined to audit and have nothing to do with the relief of rendition of accounts. No more is necessary to be said about that relief. Section 25 deals with disputes regarding challenge to the election of office bearers. The maintainability of dispute within the purview of that section is hedged with conditions and unless such requirement is

fulfilled, a statutory dispute would not be maintainable. The present action in the civil court is by some of the members who perhaps would not satisfy the requirements laid down in Section 25. It cannot be contended that Section 25 having provided the pre-conditions on the satisfaction of which a dispute within the purview of that section would be maintainable before the Registrar takes away the right of members of the Society to claim relief otherwise outside the purview of Section 25 on the basis of their right to seek remedy for their grievance. It is not the contention of Mr. Mukhoty that the relief claimed is not one which would come within the ambit of Section 9 of the Code of Civil Procedure. That being so, we are of the view that the bar of Section 25 is not applicable to the facts of the case. Therefore, the conclusion reached in the courts below is correct and the suit is maintainable."

25. Thus, it could be seen from the above decision of the Apex Court that the relief claimed in the present suit is the one coming within the ambit of Section 9 of the Code of Civil Procedure and consequently, the present suit is maintainable.

26. Learned counsel for the defendants 14 to 16 also relied on a decision of the Bombay High Court (Nagpur Bench), reported in 2008 (6) Mh.L.J. 391 = MANU/MH/1089/2008 (Krishna Ganpatrao Kamdi and others Vs. Liladhar S/o Laxman Pathode and others) to contend that if there has been any infringement of the Bye-laws under which the elections are to be held, and if it is proved that the elections have been held contrary to the Bye-laws, then the elections can be set aside.

27. Much emphasis was made by the learned counsels appearing for the contesting respondents/defendants that the Election Petition only has to be filed, after declaration of the results, that too by a contesting candidate and not by anybody else. Several decisions were cited in support of such contention, out of which, most of them are in relation to the elections conducted under the Representation of People Act, 1950/1951. It is true that under the Representation of People Act, 1950/1951, there is a bar for challenging the elections except by Election Petition presented in accordance with the provisions of Chapter-2 therein. Section 80 reads so. Section 81 of the said Act contemplates that presentation of Election Petition should be by any candidate. Section 79(b) therein defines the word "candidate" to mean that a person who has been or claims to have been duly nominated as a candidate at any election. Section 82 therein deals as to who should be parties to the Election Petition. As contemplated therein, apart from the Election Petitioner, who must be a candidate in the said election, the respondents to be arrayed therein can be other contesting candidates, apart from the Returning Candidate.

28. The word "Election" referable under the Representation of People Act, 1950/1951, is an election for a House of the People and the Legislature of States.

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Therefore, the embargo put on the persons other than a

candidate to such election to challenge the election of the Returned Candidate under the Representation of People Act, cannot be made applicable in respect of all other elections, especially in respect of the elections which are governed by specific statute or Bye-laws of any Association/Society. Therefore, the contesting respondents/defendants are not justified in saying that the present Civil Suit is not maintainable.

29. Learned counsel for the defendants 1 to 4 relied on the decision reported in 2010 (5) CTC 481 (Madras High Court-Madurai Bench) (The Tamil Nadu Evangelical Lutheran Church Vs. Daniel Shanmugam) to contend that when once the election process has commenced, the Court is not to interfere with the same. In paragraph 18 therein, a learned single Judge observed that the law has been well settled that when election process has commenced, it is not for the Court to interfere, except in cases where there are gross violation of rights of the voters being taken away. Here, in this case, it is brought to the notice of this Court that the very ballot papers reached some of the polling stations only next day of the elections. This fact itself is sufficient to hold that the rights of the voters in those stations have been taken away by such gross violation. Thus, this fact has the effect of materially altering the result of the election as well. Apart from this, there are several violations of the Bye-laws of the

first defendant-Association, as discussed in this order. Therefore, when the facts of the present case are totally different, the general proposition stated in the said decision, cannot be pressed into service by the learned counsel for the defendants 1 to 4.

30. Learned counsel for the defendants 1 to 4 also relied on the decision of the Apex Court reported in 2001 (8) SCC 509 (Shri Sant Sandguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha Vs. State of Maharashtra) to contend that this Court should not stay the continuation of the election process, even though there may be some alleged illegalities or breach of Rules. No doubt, in paragraph 12 of the said decision, the Supreme Court observed so. However, on a perusal of the facts and circumstances of the said case, it shows that it pertains to an election coming within the purview of Maharashtra Co-operative Societies Act, 1960 and the Maharashtra Specified Co-operative Societies Elections to Committees Rules, 1971, made thereunder. The facts of the said case further show that a Writ Petition was filed challenging the preparation of the electoral rolls, which was dismissed by the Bombay High Court. The Apex Court therein found that such challenge could be made under Rule 81(d)(iv) of the above said Rules by means of Election Petition. Therefore, as a specific provision is provided for filing an Election Petition under the said Rules, the Apex Court found so,

also taking note of the fact that the challenge was made by way of Writ Petition, which was rightly declined to be entertained by the High Court. In my considered view, the facts and circumstances of the said case before the Apex Court are totally different and distinguishable to the facts and circumstances of the case on hand, as no such parallel Rules are available or brought to the notice of this Court in respect of the subject matter "Election". Moreover, I have already pointed out that there is no specific provision in the Bye-laws of the first defendant-Association enabling the challenge to the elections by way of Election Petition.

31. The next decision relied on by the learned counsel appearing for the defendants 1 to 4 is reported in AIR 2014 Madras 34 = 2014 (2) LW 838 = MANU/TN/2651/2013 (Medical Council of India, Through its Chairman Vs. The Registrar/Returning Officer, Tamil Nadu Dr. M.G.R. Medical University, Rep. by its Registrar, Tamil Nadu Dr. M.G.R. Medical University, Rep. By its Registrar, Dr.L.P.Thangavelu and The Secretary to Government of India, Ministry of Health and Welfare), which is also for the very same proposition that when once election process commenced, the same cannot be stayed by this Court. Here, in this case, issue involved is not a simple question of staying the election process alone. On the other hand, the election having been conducted in the meantime during the pendency

of these applications, this Court has to necessarily see as to whether the conduct of elections, was in accordance with the Bye-laws of the first defendant-Association. The facts and circumstances discussed in this order and the findings rendered herein in respect of the various issues, show that the conduct of the elections is bad in law and illegal, as the same was in total violation of the Bye-laws of the first defendant-Association. Since this Court has also found that present suit is maintainable, I am of the view that this Court is certainly empowered to set right the illegalities and put the election process in motion to be performed in accordance with the Bye-laws of the first defendant-Association. Therefore, the above decision is also not helping the respondents 1 to 4 in any manner. Accordingly, I reject the preliminary objection raised by the contesting respondents/defendants regarding the maintainability of the present Civil Suit and hold that the present Civil Suit is maintainable.

32. Thus, it leads me to the next question as to whether the applicants/plaintiffs have made out a prima-facie case for grant of interim injunction as prayed for. I have already extracted Bye-law Nos.11 and 12 of the first defendant-Association, which deal with the mandatory procedures to be followed while conducting the elections to the Association. I have also extracted supra as to what are all the mandatory procedures required to be followed as per

the above said Bye-laws. As per the Bye-laws of the first defendant-Association, the Returning Officer shall call for nominations one month earlier from the date of actual elections. It is contended by the applicants/plaintiffs that as per the election schedule, filing of nominations started on 23.03.2015 and the election was scheduled on 18.04.2015 and thus, in between these two events, there is no clear interval of one month, as contemplated under Bye-law No.11. On the other hand, it is contended by the contesting respondents/defendants that the election schedule commenced on 19.03.2015 itself, i.e. on the date when the General Body meeting was held, and therefore, there is a clear gap of one month between 19.03.2015 and 18.04.2015 being the date of polling. I have perused the copy of the Minutes of the General Body meeting held on 19.03.2015 placed in the typed set of papers filed by the respondents 1 to 4/defendants 1 to 4. It is seen from the said Minutes of the meeting that five Election Officers and four Election Committee members were appointed and the election schedule/process was also fixed as follows:

Nomination starts	: 23.03.2015
Nomination ends	: 31.03.2015
Scrutiny and withdrawal	: 01.04.2015 and 02.04.2015
Final list of candidates	: 02.04.2015
Electioneering period	: 03.04.2015 to 16.04.2015
Date of polling	: 18.04.2015

<https://hcservices.ecourts.gov.in/> Date of publication of results : 20.04.2015

33. Even in the typed set of papers filed by the Election Officers/defendants 5 to 8, more particularly in the Minutes regarding the conduct of election, the above schedule of the election was reiterated. Therefore, from a perusal of the above Minutes of the General Body meeting held on 19.03.2015, it is evident that a decision was taken to conduct the elections on 18.04.2015 and consequently, the entire process of election schedule commencing from filing of the nominations to the publication of results, was fixed. It is to be noted at this juncture that this meeting was attended, admittedly, only by 133 members out of the total 10,000 plus members of the first defendant-Association. Therefore, the above schedule of election, viz., various dates and events of the election process, are presumably known only to those 133 members present therein at the venue, unless such election schedule is properly notified and informed to all the members of the first defendant-Association in a manner known to law. In this case, after conducting meeting on 19.03.2015, with the participation of 133 members and recording the Minutes of such General Body meeting, nothing is placed on record to show that such election schedule was notified to all the members in a manner known to and acceptable in law. On the other hand, though it is contended by the Election Officers/defendants 5 to 8 in their counter affidavit that

they circulated pamphlets regarding the election and the do's and dont's for the election, no such pamphlet is made available before this Court. Even assuming that such pamphlets were issued, in my considered view, issuing of such pamphlets cannot be construed as a proper way of notifying the elections and intimation to the members. Such Notification should emerge from the Election Officers by way of proper mode of publication and reach the voters through valid mode of service. In the absence of the same, I do not find that the procedure adopted in this case could be sustained, since there cannot be any presumption of the Notification of the elections, unless it is validly made.

34. Further, Bye-Law No.11 of the first defendant-Association contemplates one month's clear interval between the date of election and the date of calling for nominations. In the absence of proper notice issued to all the members of the first defendant-Association, the contesting respondents are not justified in saying that there is a clear one month's interval. Even otherwise, when there was no proper notice calling for nominations, there is no point in contending that the elections were held after 30 days' interval. Hence, the applicants/plaintiffs are justified in contending that there is violation of Bye-Law No.11.

35. Moreover, a perusal of page 31 (rear page) of the

(defendants 5 to 8), which is the proceedings recording the despatch of ballot papers with rules and regulations to be followed in the elections, indicates that the ballot papers sent to the Government Hospitals at Salem, Vellore, Ambur (Vellore), Vaniyambadi (Vellore), Thirupattur (Vellore), Gudiyatham (Vellore), Vellore--GPH Penlant Hospital, Vellore ESI Hospital, Vellore--Wallajah Hospital, Dindugal, Arni, Dharmapuri and Pudukkottai, were received by the concerned persons in those stations only on 19.04.2015, i.e. one day after the elections. The concerned persons' signatures found therein contain the date as 19.04.2015. This lapse has been pointed out by the learned Senior Counsel appearing for the plaintiffs and not answered by the contesting respondents. When Bye-Law No.11 contemplates that the ballot papers shall be distributed one week prior to the date of elections, supplying the ballot papers to the above stations one day after the elections, certainly, shows that there was no fair election, apart from the fact that the same was conducted against the Bye-laws of the first defendant-Association. Therefore, it is crystal clear that "All is not well" with the first defendant-Association in conducting the elections in a just, proper, fair and transparent manner.

36. Another ground of attack by the applicants/plaintiffs is that the conduct of elections by booth polling, is against Bye-law No.11 of the first

defendant-Association, and therefore, such procedure cannot be permitted. It is not in dispute that Bye-Law No.11 specifically emphasises that "polling of votes shall be through post only". Bye-law No.12 contemplates that "the voters shall send their ballot papers through post directly to the Returning Officer". When such being the mandatory procedure to be followed in respect of polling of votes, conduct of elections by booth polling, as admittedly done in this case, cannot be sustained, as such procedure is against the Bye-laws of the first defendant-Association. Certainly, there should have been some reasons for having such procedure for polling the votes through post only. At this juncture, it is pertinent to note the stand of the respondents 1 to 4/defendants 1 to 4 in justifying the quorum as "100" and the voting through post, in their counter affidavit. They have justified the above, in view of the fact that the members of the first defendant-Association, namely the Staff Nurses, are doing important service to the Society, by attending the poor patients in the Government Hospitals, and therefore, it is impossible for all the members to assemble in one place on a particular day. When such being the intention and the Bye-law had also been framed to that effect, deviating from such Bye-law and conducting the elections in a totally different manner, cannot be justified. Therefore, hereagain, I find that the polling of votes through booth

is against the Bye-laws of the first defendant-Association, and therefore, such procedure cannot be sustained or given a seal of approval. No doubt, the learned counsel appearing for the respondents 1 to 4/defendants 1 to 4 contended that Bye-law No.27 empowers the Central Executive Committee to make emergency addition and amendments to the Constitution of the Association. To appreciate the said contention, it is better to read Bye-law No.27, which is as follows:

"27. Emergency Provision: Emergency addition and amendments to the constitution may be made by the Central Executive Committee provided they are ratified by a General Body within three months from the time of implementation."

37. A perusal of the above said Bye-law No.27 shows that though the Central Executive Committee has power to make emergency addition and amendments to the Constitution (Bye-laws) of the first defendant-Association, the same should be ratified by the General Body within three months from the time of implementation. Nothing is placed on record to justify the above contention of the respondents 1 to 4/defendants 1 to 4 that the Central Executive Committee has made any amendment or addition to the Constitution (Bye-laws) by proper procedure. In the absence of any such proceedings followed by the ratification, as contemplated under Bye-law No.27, there is no meaning in contending that

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feeble attempt is made to contend that same method of booth polling was followed in all the past elections. I do not think that a procedure adopted against the Bye-laws, can be sustained, especially when it is put to challenge.

38. One more vital aspect also needs to be looked into. The decision to conduct the elections was taken in the General Body meeting held on 19.03.2015. Such meeting was conducted, admittedly, not by issuing any written communication or notice to all the members. On the other hand, it is admitted by the respondents 1 to 4/defendants 1 to 4 that the information regarding the meeting was communicated over phone to the respective District Branch office bearers and through them, the message was communicated to all the members. A perusal of the Bye-laws of the first defendant-Association, more particularly, Bye-law No.16, shows that no such procedure of oral communication is contemplated or permissible. On the other hand, Bye-law No.16 specifically contemplates that "one month's notice shall be necessary for any General body meeting" and that "the notice to all meeting shall specify the subject to be discussed". In this case, no such one month's notice was issued to the members of the first defendant-Association, much less the one specifying the subject to be discussed. Therefore, the very conduct of the General Body meeting on 19.03.2015 itself was not in accordance with the Bye-laws of the first defendant-

Association, as such procedure of communicating the message over phone, as adopted by the respondents 1 to 4/defendants 1 to 4, in effect, is not a fair and transparent procedure. In other words, it has to be held that there is no proper notice at all for conducting such meeting. It is needless to say that the absence of proper notice with Agenda, prevents effective participation of the members in larger numbers. No doubt, there was a quorum on 19.03.2015. However, considering the total number of members, namely more than 10,000, it goes without saying that the persons attended the meeting on the said date, namely 133 members, are about 1% only, and therefore, the decision taken in the said meeting cannot be a decision reflecting the majority view of the members of the first defendant-Association, especially when the decision is in respect of conducting elections. Therefore, I find that the General Body meeting conducted on 19.03.2015 is also in violation of the mandatory requirements of the Bye-laws of the first defendant-Association.

39. No doubt, this Court has permitted the elections to go on, however, with the specific direction not to publish the results. It is needless to say that such order came to be passed as an interim measure, pending the hearing of these interlocutory applications on merits and passing orders thereon. Therefore, granting such permission during the pendency of these interlocutory applications

will not confer any right on the respondents/defendants for declaration of the results. Merely because the elections are conducted, this Court cannot give its seal of approval, if such conduct of elections is against the Bye-laws of the first defendant-Association.

40. Mr.S.Saravanakumar, learned counsel appearing for the defendants 1 to 4 cited a decision of the Apex Court reported in 2008 (11) SCC 1 (Mandali Ranganna Vs. T.Ramachandra) to contend that grant of injunction is an equitable relief and the Court should make all endeavours to protect the interest of the parties. There is no quarrel over the said proposition. Grant of injunction would arise only after appreciation of all the facts and circumstances placed by both parties, especially when the applications are disposed of finally. In this case, this Court has found that the plaintiffs have established that there are clear violations of the Bye-laws in conducting the elections. Such being the position, the above decision of the Apex Court is not helping the defendants 1 to 4 in any manner.

41. The learned counsel for the defendants 1 to 4 also relied on the decision of this Court reported in 2010 (1) CTC 62 (K.Periasamy Gounder Vs. Kohari Industrial Corporation Ltd.) to contend that no injunction can be granted if the events or acts sought to be injuncted, have already happened. In this case, the plaintiffs have approached this Court earlier to the date of elections, and

only by virtue of the interim orders passed by this Court, pending disposal of these applications, the elections had been conducted. Therefore, it cannot be contended that the elections already conducted in this case, cannot be interfered with by this Court. Moreover, when the facts and circumstances of the present case are totally different and distinguishable to that of the facts in the above decision, the same is not helping the respondents 1 to 4/defendants 1 to 4 in any way.

42. Mr.N.Manokaran, learned counsel appearing for the defendants 10 to 13, relied on the decisions of the Supreme Court reported in 2013 (5) SCC 470 (Rajasthan State Industrial Development and Investment Corpn. Vs. Diamond and Gem Development Corpn. Ltd.) and 2011 (10) SCC 420 (Cauvery Coffee Traders Vs. Hornor Resources (International) Co. Ltd), to contend that one cannot approbate and reprobate the matters, as the first plaintiff herein, who has participated in the election process, cannot challenge the same later. I have already pointed out that the present suit is filed even before the conduct of the elections, by challenging the very process of the election itself, by specifically pointing out that the same is not in accordance with the Bye-laws of the first defendant-Association. Only this Court, by way of interim directions, that too during the pendency of the hearing of these applications, allowed the election to go on, however,

with a further direction not to publish the results. Therefore, participation by the first plaintiff, if any in the election, is only based on the interim order passed by this Court, and hence, such participation will not disentitle him from pursuing the suit continuously. That being the case, both the above decisions of the Apex Court, are not applicable to the present case.

43. The other two decisions of the Supreme Court reported in 2010 (9) SCC 712 (M.Chandra Vs. M.Thangamuthu) and AIR 1978 SC 851 = 1978 (1) SCC 405 (Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others), are cited by the learned counsel for the defendants 10 to 13, to contend that the Election Petition cannot be filed based on frivolous grounds and there should be a definite cause of action. A perusal of the said two decisions, shows that both are arising out of the dispute in respect of the elections conducted under the Representation of the People Act. I have already discussed that the scope of the Representation of the People Act and various mandatory requirements stipulated under therein and the Rules governing the respective Elections conducted under the said Act, which contemplates filing of an Election Petition only. The facts of the present case are totally different and not governed by the said Act.

Moreover, a perusal of the pleadings of the plaintiffs, shows that they have come out with a definite cause of

action. Therefore, I find that those two decisions are also factually distinguishable and cannot be applied to the case on hand.

44. Mr.Bharathachakravarthi, learned counsel representing Mr.K.Srinivasamurthy, learned counsel appearing for the defendants 5 to 8, who are the Election Officers, relied on 2009 (14) SCC 318 (M.J.Jacob Vs. A.Narayanan) to contend that the election results should not be lightly set aside and the mandate of the elector should ordinarily be respected by Courts. Here again, the matter arises under the Representation of the People Act. It is needless to state that the facts of each case have to be considered for applying the principles laid down in a decision. This Court has already found that the election conducted in this case is not in conformity with the Byelaws of the first defendant-Association and hence, the same is bad. Therefore, the above decision is not applicable to the present facts and circumstances of the case.

45. Learned counsel for the Election Officers also relied on the decision of the Supreme Court reported in 2010 (12) SCC 458 (H.R.Basavaraj Vs. Canara Bank) to contend that if there is an alteration of the contract of agreement and such alteration is agreed by the parties by their implied conduct, then such alteration cannot be found fault with. This decision is cited in support of their

submission that even though the Bye-laws of the first defendant-Association provide for postal voting only, the booth polling conducted in this case cannot be found fault with, as the parties have agreed to the same. I do not think that the above contention can be accepted, in view of the fact that no material is placed before this Court to show that any such amendment to the Bye-laws of the first defendant-Association is brought out by undergoing proper procedure contemplated therein, more particularly, in Bye-law No.27. That being the case, the above decision which is factually distinguishable, is also not helping the respondents 5 to 8/defendants 5 to 8/Election Officers in any manner.

46. Learned counsel for the Election Officers also relied on the decision Delhi High Court reported in 1996 (1) CLT 83 (Jagjit Singh Sangwan Vs. Union of India and others) to contend that the Bye-laws are having the effect of contracts between the members and the Association/Society and they do not have the force of law. Once it is admitted that the Bye-laws are having the effect of contract between the members and the Association/Society, certainly, there cannot be two opinions as to the binding nature of such contract between the parties. Therefore, if any deviation is made from such contract, more particularly, in conducting the elections, certainly, the affected party can urge the same before

Court that such violation is bad in law. Therefore, the above decision is also not helping the Election Officers in any manner.

47. It is also to be noted at this juncture that the plaintiffs have come before this Court and filed this Civil Suit on 07.04.2015, which is much earlier to the actual date of election being 18.04.2015. They seek for mandatory direction in the suit for conducting the election as per the registered Bye-laws of the first defendant-Association and for permanent injunction restraining the defendants from conducting the election on 18.04.2015. When this Court has found that the conduct of election on 18.04.2015 itself is against the Bye-laws of the first defendant-Association, the results cannot be allowed to be published during the pendency of the suit.

48. Strictly speaking, in this case, the election process was not at all stalled in-toto. On the other hand, it is evident that even though this Court has granted an ex-parte order of interim injunction, such order was modified later, by allowing the elections to go on, however, with a direction not to publish the results. Therefore, in this case, it is clear that the election process is almost over and only the declaration of results is due. Hence, in the main suit, it has to be seen as to whether the election process conducted so far, is in accordance with the Bye-laws of the first defendant-

Association. Such issue can be finally decided in the main suit after considering the respective pleadings of the parties and the oral and documentary evidence to be adduced in support of such pleadings. Ultimately, if the Court comes to the conclusion in the main suit that the election process conducted is not in accordance with the Bye-laws of the first defendant-Association, necessity for declaration of the results would not arise. Consequently, a decree has to be passed directing the defendants to conduct the elections in accordance with the Bye-laws of the first defendant-Association. On the other hand, if the Court comes to the conclusion that the election was conducted in accordance with the Bye-laws, it automatically follows the declaration of the results. Therefore, I am of the view that the process of election having been allowed to continue till the declaration of results, has to wait for the final adjudication in the main suit for a finding regarding its validity. However, for the purpose of deciding these interlocutory applications, it is to be seen as to whether the plaintiffs have made out a prima-facie case and whether the balance of convenience is in their favour. All the facts and circumstances discussed herein and the findings rendered herein, show that the plaintiffs have made out a strong prima-facie case for grant of an interim order. This Court also finds that the balance of convenience is also very much in their favour. As this

Court has found that the applicants/plaintiffs have made out a prima-facie case that such election process was not in accordance with the Bye-laws, there is no meaning in allowing the results also to be published and thereafter to proceed with the suit, especially under the circumstance that the contesting parties in the elections are also before this Court as party-defendants.

49. Accordingly, the following orders are passed:

(i) O.A.No.411 of 2015 is allowed and consequently, the Election Officers are directed not to publish the results, pending disposal of the suit.

(ii) Till the disposal of the suit, the present office bearers shall continue to function.

(iii) A.Nos.4053 and 2853 of 2015 are dismissed.

(iv) Since the present suit is against the elections to the first defendant-Association, the final disposal of the suit cannot be delayed any further. Accordingly, the respondents/defendants are directed to file their respective written statement(s) within a period of two weeks from today, and consequently, the plaintiffs are entitled to file their reply statement, if any, within a period of two weeks thereafter. On completion of such

pleadings, the main suit shall be taken up for trial /
final disposal and disposed of at the earliest.

(v) No costs.

sd/.K.R.C.B.J

15.07.2015

//Certified to be a true copy//

Dated this the day of 2016

R.s/20.04.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of
the Order/Judgment Decree in this format.



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