

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21-08-2015

(Orders reserved on 18-08-2015)

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Application Nos.502 and 503 of 2015
in
C.S.No.388 of 2015

1.M.Sekar

2.A.Venugopal

...Applicants
in both the applications

Vs.

1. The Tamil Nadu State Council
of the Communist Party of India,
Rep. by its Secretary Thiru R.Mutharasan,
48, 10th Avenue,
Ashok Nagar,
Chennai 600 083.

2. R.Mutharasan,
The Tamil Nadu State Council of the
Communist Party of India,
48, 10th Avenue,
Ashok Nagar,
Chennai 600 083.

3.D.Pandian,
Member, Tamil Nadu State
Council of the Communist Party of India,
Door No.119/2, Madura Flats,
Anna Nagar West Extension,
Chennai 600 040.

4.The Communist Party of India,
Rep. by its General Secretary,
Ajay Bhavan,
15, Indirajit Gupta Marg,
New Delhi 110 002.

...Respondents in
both the applications

Original Application No.502 of 2015 is filed and the

<https://hcservices.ecourts.gov.in/hcservices/summons> issued under Order 14 Rule 1 & 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 second respondent from functioning as the State Secretary of the first respondent and from taking any decisions in the said capacity pending disposal of the above suit.

Original Application No.503 of 2015 is filed and the Judge's Summons issued under Order 14 Rule 1 & 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 1 -3, their men, agents, employees, staff, subordinates or any person acting on behalf of them from in any way interfering with the functioning of the applicants as members of the Communist Party of India, 4th respondent herein pending disposal of the above suit.

Civil Suit No.388 of 2015 is numbered and the plaint is filed under Order 7 Rule 1 of the C.P.C. read with Order 4 Rule 1 of the Original Side Rules of this Court, praying to pass a judgment and decree:

(a) declare that the election of the second defendant on 28.02.2015 as the State Secretary of the first defendant as ab initio void and is liable to be set aside and consequently declare that all acts done by the second defendant in the capacity of the State Secretary of the first defendant is ab initio void and non est and consequently pass an order of permanent injunction

restraining the second defendant from in any way functioning as the Secretary of the first defendant.

(b) declare that the expulsion of the plaintiffs from the membership of the Communist Party of India as evidenced from the statement of the second defendant in the newspaper "Jana Sakthi" is illegal and ab initio void;

(c) grant an order of permanent injunction restraining the defendants, their men, employees, agents, staff, subordinates and anybody acting on behalf of them from in any way preventing the plaintiffs from functioning as the members of the Communist Party of India viz., the fourth defendant herein.

For applicants
in both the applications : Mr.P.Wilson,
Senior Counsel
for M/s.P.Wilson Associates

For respondents
in both the applications : Mr.N.G.R.Prasad
for M/s.Row & Reddy

ORDER

The applicants in both the applications are the plaintiffs. They filed the above suit seeking for the following reliefs:

(a) declaring that the election of the second defendant on 28.02.2015 as the State Secretary of the first defendant as ab initio void and is liable to be set aside and consequently declare that all acts done by the second defendant in the capacity of the State Secretary of the

first defendant is ab initio void and non est and consequently pass an order of permanent injunction restraining the second defendant from in any way functioning as the Secretary of the first defendant.

(b) declare that the expulsion of the plaintiffs from the membership of the Communist Party of India as evidenced from the statement of the second defendant in the newspaper "Jana Sakthi" is illegal and ab initio void;

(c) grant an order of permanent injunction restraining the defendants, their men, employees, agents, staff, subordinates and anybody acting on behalf of them from in any way preventing the plaintiffs from functioning as the members of the Communist Party of India viz., the fourth defendant herein.

2. Pending disposal of the above suit, they filed the above interim applications for the following reliefs:

i) O.A.No.502 of 2015 is filed to grant an ad-interim injunction restraining the second respondent from functioning as the State Secretary of the first respondent and from taking any decisions in the said capacity pending disposal of the above suit.

ii) O.A.No.503 of 2015 is filed to grant an ad-interim injunction restraining the respondents 1 -3, their men, agents, employees, staff, subordinates or any person acting on behalf of them from in any way interfering with the functioning of the applicants as members of the

Communist Party of India, 4th respondent herein pending disposal of the above suit.

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

i)They are the members of the Communist Party of India, which has five levels viz., National Level, State Level, District Level, Taluk Level and Unit Level. At the State Level, the State Conference is the supreme body and meets once in three years. The State Council, the first respondent herein comprises of 125 members and makes policy decisions. Similarly, at the District Level, there is a District Party Conference which is the highest organ within the District. The functioning of the party is regulated by the provisions of the Communist party of India. The 23rd Tamilnadu State Conference of the Communist Party of India was held between 25th and 28th February 2015 at Coimbatore. The said Conference was conducted by the third respondent without any authority to do so. In the said conference, members of the first respondent were elected in contravention of the Constitution of the Communist Party of India. Therefore, these applicants sought to challenge the election by filing a suit in C.S.SR.No.12997 of 2015 before this Court and in the application filed therein seeking leave, notice has been ordered. There are several serious proved charges of corruption and malpractices against the third respondent on various issues. The State Control

Commission of which the second applicant herein was a Member, has taken disciplinary action against the third respondent and removed him from all party posts held by him. The charges against the third respondent was that he fraudulently misrepresented himself to be the Secretary of the South Madras Electricity Workers Union and sold a property belonging to the said Union by way of sale dated 22.03.2012 and pocketed a sum of Rs.3 crores, even though the sale consideration in the sale deed was shown as only Rs.20 lakhs. The General Secretary of All India Trade Union Congress filed O.S.No.173 of 2014 on the file of the District Court, Trichy against such fraudulent sale and the said suit is still pending. A police complaint was also lodged on 29.01.2015 by one N.Mohanraj against the third respondent. The first applicant has also preferred a complaint before the Commissioner of Police, Trichy on 08.04.2015 and the Director of General Police on 08.04.2015 regarding the fraud committed by the third respondent. The State Control Commission of the Communist Party of India passed an order dated 11.05.2015, imposing punishment of removal from his post as the State Secretary. The said order was not challenged by the third respondent and therefore, he ceased to hold the post of State Secretary and consequently, he has no authority to convene the State Conference at Coimbatore. When the election of the members of the State Council itself was illegal, those members

consequently elected the second respondent on 28.02.2015 as the State Secretary of the first respondent. Therefore, such election of the second respondent also is contrary to the provisions of the constitution of the Communist Party. As per Article XX(7) of the Constitution, the State Council shall elect a State Executive of not more than 31 members and a Secretary will be elected from among the members of the State Executive. In this case, the first respondent has not elected the State Executive at all. On the other hand, the first respondent directly proceeded to elect the second respondent as its Secretary. Thus, it vitiates this election of the second respondent.

ii) On 17.04.2015, the applicants were shocked and surprised to see from the press statement made by the third respondent as though the second respondent has caused a statement in the press stating that the applicants have been expelled from the party membership. Power to expel a member from the Communist Party is vested with the party unit which he or she belongs. Disciplinary action with regard to suspension for a period not exceeding one year and expulsion can only be taken by the highest units which the member belong, as per Article XXX(7). The first applicant belongs to the Cuddalore District Council and Cuddalore party District Centre and the second applicant belongs to Perambalur District Council and Perambalur Town

Branch Unit. Therefore, those units alone could take disciplinary action against the applicants. The second respondent has no authority to expel the applicants. In any event, the applicants were not given any show cause notice by any unit of the Party at any point of time before expulsion. As per Article XXX(10), opportunity of hearing before passing an order of punishment, is a must. Therefore, the expulsion is illegal, besides ab-initio void. Thus, the entire action of the second and the third respondents is tainted with malafide.

4. The respondents/defendants filed their counter affidavit. The contention of the respondents are as follows:

The applicants have filed the present suit out of frustration because they lost credibility among the rank and file in the Party. The Party had no other option but to expel the applicants from the party for their utter lack of party discipline and party activities. With regard to the allegations against the third respondent in respect of the property sold, it is stated that the Party and the third respondent have suitably replied against those allegations in a Party organ Janasakthi. Noticing the uncontrolled antiparty activities of the applicants, the party had to take emergent step to expel them from the party. Otherwise, their continuance would have done

further damage to the party. Therefore, the decision of removal was taken on 16.04.2015 by consulting the available national council members of the party elected from Tamilnadu State and it was also widely published in the papers and the applicants are well aware of the same. The decision of the expulsion was ratified by the State Executive Council and State Council Meetings held at Tirupur on 25-26th April 2015. The applicants did not exhaust the internal mechanism available within the party before going into the press and giving adverse publicity about the party. The first plaintiff seems to conduct a parallel Conference and he claims to be elected as the District Secretary, Cuddalore in that conference. Since he was a Former Secretary of the party, he was allowed to attend the conference, even though he was not elected in the District Conference. Only the State Councils is the competent body to finally decide the State Conference. The State Council is a much wider representative body. Before the matter is decided in the State Council, it was thoroughly discussed in the Executive Committee. In the Executive Committee called on 04.02.2015, unanimous decision was taken to conduct the State Conference. Based on this decision, the matter of conducting State Conference was placed before the State Council. On 16.10.2014, the State Council unanimously decided to convene the State Conference at Coimbatore. Therefore, the statement that

the said conference held at Coimbatore without an authority, is not correct. The State Conference was conducted only by the State Council. The averments of the corruption, etc., stated in the suit in C.S. SR No.12997 of 2015 were all imaginary and bereft of any truth. The actions and activities of the applicants do not call for ordinary disciplinary action under Article XXX(7) of the Constitution. The applicants were expelled by exercising the power conferred under sub clause (5) and (6) of the Article XXX of the Constitution. If the applicants are aggrieved, they could have appealed to the State Control Commission or Central Control Commission or National Council of Party. Without exhausting those appeal remedies, filing of the present suit is not maintainable. Since the applicants betrayed the confidence, interests and reputation of the party, no show cause is to be issued.

5.A common reply affidavit is filed by the applicants disputing various averments contained in the counter filed by the respondents.

6.Mr.P.Wilson, learned Senior counsel appearing for the applicants submitted as follows:

i)The plaintiffs are active workers of Communist Party of India and they were removed from the membership without any valid reasons. Removal was made only as a vindictive

action, as the applicants questioned the sale of property by the third defendant at Trichy. The State Secretary was not elected as per the procedure contemplated under the Constitution. The outgoing State Panel has not given the names of the candidates as required under the constitution. Therefore, the election of the second defendant as the State Secretary is bad.

ii.Regarding the plaintiffs' removal, it is to be noted that admittedly, no notice was given to them before such removal, whereas the constitution of the party mandates hearing of the affected person before taking action. Power of removal is vested with the District Council and State Council only whereas the State Secretary has removed the applicants. No documents or proceedings are placed before this Court by the respondents to show under which proceedings, these applicants were removed other than the press statement. As the removal is made in violation of the principles of natural justice, the same is to be held as illegal and consequently, these applicants should be permitted to function as workers/members of the Communist Party. Both the applicants are still functioning in their respective capacity.

iii) **AIR 1963 SCC 1144, (T.P.Daver vs Lodge Victoria)**

is relied on for the proposition that the Rules should be strictly complied with before passing an order of removal.

Likewise, **2007 (6) SCC 130, (D.Dwarakanath Reddy vs. Chaitanya Bharathi Educational Society)** and **Manu/MH/0397/2015, (Pravina Ramji vs State of Maharashtra)** are also relied on in support of the plaintiffs' case.

7.Per contra, Mr.N.G.R.Prasad, learned counsel appearing for the respondents submitted as follows:

i) All the points raised in the present suit and applications are matter for a trial and therefore, the plaintiffs are not entitled for any interim order. The plaintiffs were removed from the membership of the party for their anti party activities. The decision of removal was ratified by the State Council and therefore, it cannot be contended that the decision was not in accordance with the constitution.

ii)Even otherwise, the applicants are having an alternative remedy by way of filing an appeal under the constitution which they have not exhausted so far. Property at Trichy was sold properly by the third defendant. The plaintiff should have approached the internal mechanism for the redressal of their grievances instead of going to the press and by giving a police complaint. Therefore, it shows that the plaintiffs are acting with malafide.

8. Heard the learned Counsels appearing on either side and perused the materials placed before this Court.

9. The point for consideration in these applications is as to whether the applicants have made out a prima facie case for grant of interim injunction as prayed for and as to whether the balance of convenience is also in their favour. Of course, it is also to be seen as to whether irreparable injuries would be caused to the applicants if injunction, as sought for, is refused.

10. The main suit is filed by the applicants seeking for declaration to declare the election of the second defendant as the State Secretary as ab-initio void and consequently, to declare all acts done by the second defendant in such capacity is ab-initio void and non-est. They also seek for permanent injunction restraining the second defendant from in any way functioning as the Secretary of the first defendant. The other prayer sought for in the suit is for further declaration to declare the expulsion of the plaintiffs from the membership of the Communist Party of India as illegal and ab-initio void and for permanent injunction restraining the defendants from in any way preventing the plaintiffs from functioning as members of the communist party.

11. Pending disposal of the above said suit, the applicants have sought for injunction one to restrain the second defendant from functioning as a State Secretary of the first defendant and other one is to restrain the defendants 1 to 3 from in any way interfering with the functioning of the applicants as members of the Communist Party of India.

12.I have already extracted the contentions of the respective parties. I have also extracted the respective submissions of the learned counsels appearing for the respective parties. In order to avoid multiplication, I would like to restrict reiteration of those contentions and submissions herein below except to an extent wherever the same are necessary for disposal of these applications alone.

13.Let me first consider the Original Application No.502 of 2015 wherein the applicants are seeking to restrain the second respondent from functioning as the State Secretary.

14.The plaintiffs in the main suit challenged the very election of the second defendant by raising very many grounds. The main contention of the plaintiffs in this regard is that the State Conference will have to elect the State Executive and out of the members of the State Executive, one will have to be elected as the State

Secretary as per the Constitution and however, such procedure is not followed in this case. In this aspect, the plaintiffs relied on Article XX(7) of the Constitution of the Communist Party of India. On the other hand, it is contended by the respondents/defendants that the State Conference was organised only with the unanimous decision of the Tamilnadu State Council as per Article IX(2) of the party constitution and that the State Council is body to decide the State Conference. It is further contended by them that the State Conference is wide reputation body and before the matter is being decided in the State Council, it was thoroughly decided in the Executive Committee. Thus, it is contended that the meeting of the Executive Committee was called on 04.02.2015 and in that meeting, an unanimous decision was taken to conduct the State Conference and based on such conference, the matter of conducting the State Conference was placed before the State Council which in turn, unanimously decided on 16.10.2015 to convene State Conference at Coimbatore. Therefore, it is contended by the defendants that the State Conference held between 25th and 28th February 2015, was conducted only by the State Council and not by the third respondent as alleged by the plaintiffs. It is further contended by the defendants that the members of the first respondent was elected only based on the provisions of the Party Constitution XIX(2) (e).

15. From the above rival contentions of the parties, it is evident that the challenge made by the applicants as against the election of the second defendant as State Secretary is to be considered and decided only after conducting a trial of the suit by allowing the respective parties to adduce evidence in support of their respective pleadings. Therefore, when it is evident that the challenge made against the election of the second defendant is to be considered and decided only in the main suit, the question of preventing the second defendant from functioning as a State Secretary, in the meantime by way of passing an interim order does not arise, more particularly, when the facts are in dispute with regard to the procedure to be followed in electing such person to the office. Moreover in an election dispute, unless the election itself is set aside, preventing the party, who got elected, from functioning in the elected post does not arise. Therefore, I find that the plaintiffs have not made out a prima facie case for grant of interim injunction. Accordingly, this application fails and the same is dismissed.

16. Now let me consider the other Application No.503 of 2015 wherein the applicants are seeking an interim injunction to restrain the respondents 1 -3, their men, agents, employees, staff, subordinates or any person acting on behalf of them from in any way interfering with the

functioning of the applicants as members of the Communist Party of India, 4th respondent herein pending disposal of the above suit.

17. The applicants were admittedly party members of the Communist Party of India. There is no dispute to the above said fact. The very fact that they were removed from the membership would show that they were previously functioning as members and therefore, they are entitled to seek the procedure contemplated under the Constitution of the Communist Party of India to be followed while taking disciplinary action against them as the members of such party. The case of the defendants is that the applicants were removed from membership because of their anti party activities. It is also an admitted fact that before removing the applicants from the membership, they were not put on notice nor they were given an opportunity of hearing. According to the defendants, when the applicants betrayed the confidence, the interest and reputation of the parties, there is no necessity to issue show cause notice. It is the case of the defendants that under Sub Clause (5) and (6) of Article XXX of the Constitution, when an immediate disciplinary measure is warranted to protect the interest of the party, no notice is required to be issued before taking such disciplinary action. With these respective rival contentions of the parties, let me

consider the relevant Articles of the constitution of the Communist Party of India dealing with disciplinary action.

18. Article XIII deals with Rights of Party Members, which are as follows:

"(a) To elect party organs and committees and be elected to them.

(b) To participate freely in discussions in order to contribute to the formulation of party policy and decisions of the party.

(c) To make proposals regarding their own work in the party, to get work assigned to themselves in accordance with their ability and situation in life.

(d) To make criticism about party units and functionaries at party meetings. Such criticism shall be sent to the comrade or unit criticised and the reply reported to the unit concerned within a reasonable time.

(e) To demand to be heard in person when any party unit or organisation discusses disciplinary action against any member or evaluates his or her personal behaviour or work in connection with serious mistakes which he or she is alleged to have committed.

(f) When any member disagrees with any decision of a party unit or organisation, he or she has a right to submit his or her opinion to the higher committee, including and up to the national council and the Party Congress. In all such cases the members shall, of course, carry out

<https://hcservices.ecourts.gov.in/hcservices/> these party decisions and the differences shall be

sought to be resolved through the test of practice

and through comradely discussions.

(g) To address any statement, appeal or complaint to any higher party organisation up to and including the national council and the party congress and to receive the answer to the appeal or redressal of one's complaint within a reasonable time."

(emphasis supplied)

19. Perusal of the above Article more particularly sub clause 'e' would show that a member of the party is having a right to demand to be heard in person when disciplinary action is contemplated against such person and being discussed by any party unit or organisation. Needless to say that the above protection is provided in line with the principles of natural justice. When a person is to be heard even at the stage of contemplating disciplinary action, it is all the more required that such principle is to be followed before imposing a punishment on him as well.

20. Article XXX deals with party discipline. Sub Clause (1) to Sub clause (12) reads as follows:

" Party Discipline:

1. Discipline is indispensable for preserving and strengthening the unity of the party, for enhancing its strength, its fighting ability and its prestige, and for enforcing the principles of democratic centralism. Without strict adherence to discipline, the party cannot lead the masses in struggle and action, nor discharge its responsibility towards them.

2. Discipline is based on conscious acceptance of the aims, the programme and the policies of the party. All members are equally bound by party discipline irrespective of their status in the party organisation or in public life.

3. Violation of party constitution and decisions of the party as well as any other action and behaviour unworthy of a member of the Communist Party shall constitute a breach of party discipline and liable to disciplinary actions.

4. The disciplinary actions.

- (a) Warning.
- (b) Censure.
- (c) Public censure.
- (d) Removal from the post held in the party.
- (e) Suspension from full membership for any period but not exceeding one year.
- (f) Expulsion.

5. Disciplinary action shall normally be taken where other methods, including methods of persuasion, have failed to correct the comrade concerned. But even where disciplinary measures have been taken, efforts to help the comrade to correct himself or herself shall continue. In cases where the breach of discipline is such that it warrants an immediate disciplinary measure to protect the interests of the party or its prestige, the disciplinary action shall be taken promptly.

6. Members found to be strike-breakers, habitual drunkards, moral degenerates, betrayers of party confidence, guilty of financial irregularities, or members whose actions are detrimental to the working class and to the party, shall be dealt

with properly by the party unit to which they belong or by a higher unit.

7. Disciplinary action may be taken against any member either by the unit of which he or she is a member, or by any higher unit. In case he or she belongs to more than one unit, disciplinary action as under clauses (e) and (f) of section 4 may be taken only by the highest unit to which he or she belongs either on its own initiative or on recommendations of the lower unit. All other disciplinary actions may be taken by any unit of which he or she is a member.

8. Expulsion from the party is the severest of all disciplinary measures and this shall be applied with utmost caution, deliberation and judgement.

9. A disciplinary measure involving suspension or expulsion of a member shall not come into effect without confirmation from a higher committee. Such a decision shall be immediately conveyed for confirmation to the next higher party unit which shall give its decision within three months or its meeting held after receipt of the information if such a meeting is not held within three months. During the period between the decision of expulsion or suspension and confirmation by the higher committee, the comrade involved will stay removed from the post he or she holds.

10. The comrade against whom a disciplinary measure is proposed shall be fully informed of the allegations, charges and other relevant facts against him or her. He or she shall have the right to be heard in person by the party unit in which his or her case is discussed.

11. There shall be right of appeal in all cases of

disciplinary action.

12. The national council or a state council shall have the right to dissolve or take disciplinary action against a lower committee in cases where a persistent defiance of party decision and policy, serious factionalism or a breach of party discipline are involved or where the lower committee suffers from persistent inactivity and fails to implement party decisions despite repeated urgings, after giving the committee concerned reasonable chance of explaining its position."

21. As per sub clause (4) of Article XXX, expulsion from the membership is a disciplinary action and such disciplinary action shall be taken promptly in case where the breach of disciplinary is such that it warrants immediate disciplinary measure. Further, perusal of sub clause (5) would show that such disciplinary action shall be taken normally where other methods including methods of persuasion, have failed to correct the person concerned. Sub Clause (7) contemplates that disciplinary action may be taken against any member either by unit which he or she belongs or by higher unit.

22. Likewise, it is evident from clause (8) that expulsion from the party post is severest of all disciplinary measures and the same shall be applied with utmost caution, deliberation and judgment. Thus, it is

evident from sub clause(8) of Article XXX that before passing an order of expulsion, the Disciplinary Authority must act with utmost caution. In other words, as it is the severest punishment among all, the affected party must be in a position to know as to what for he is sought to be punished and that such punishment is intended to be imposed after deliberation and judgment. Needless to say that deliberation does not mean an unilateral hurried action. Thus, a decision taken followed by such unilateral action cannot be the right decision. Therefore, the deliberation contemplated under sub clause (8) is to be understood to mean that the Disciplinary Authority has to engage in a long and careful consideration, which is possible only by giving adequate opportunity of hearing to the member against whom action is intended for. Further, Sub Clause (10) of Article XXX makes it clear that it is mandatory on the part of the Disciplinary Authority to inform the member, against whom the disciplinary measure is proposed, all the allegations, charges and other relevant facts against him. It is further emphasised therein that such person shall have the right to be heard in person by the party unit in which his or her case is discussed. Therefore, it is evident that the principles of natural justice has to be strictly followed with before the member is imposed with punishment. In fact, when such right is conferred to the members under Article XIII (1)(e) itself

as discussed supra, a conjoint reading of Article XIII (1) (e) with Article XXX sub clauses (8) and (10) of the Constitution of India would, thus, undoubtedly, show that before passing an order of expulsion, the member against whom such punishment is sought to be imposed should be put on notice and given an opportunity of hearing in person.

23. In this case, admittedly before imposing the punishment of expulsion based on certain allegations, the applicants were not put on notice and they were not given an opportunity of hearing. In fact, they came to know about the expulsion only through the statement given by the second and third respondents through press conference.

24. Preamble of the Constitution of Communist Party of India reads that it is the political party of the Indian working class and a voluntary organisation of workers, peasants and toiling people in general. It further reads that Communist Party of India organises itself and its work on the basis of democratic centralism and on full inner party democracy. It also reads that the party believes in free and frank debates and respect dissenting opinions. Having these objects and ideologies as the preamble of its Constitution, the least expected from the party is that it hears its own member before punishing him. Otherwise, such action of expulsion without hearing the affected person is

to be construed only as an arbitrary exercise of power, not passing the test of reasonableness. It is not the case of the respondents that the methods of persuasion or other methods were attempted to correct the applicants herein concerned and they failed. On the other hand, these applicants were expelled unilaterally based on the allegation of anti party activities. Therefore, the undisputed fact remains that the applicants were punished by not following the principles of natural justice. Even when persons who commit heinous crime are entitled to be heard before they are punished, I am surprised, as to why the respondents have chosen not to give an opportunity of hearing to these applicants before imposing the punishment of expulsion.

25. Punishment of expulsion being a major punishment, the same has to pass the test of principles of natural justice. Admittedly, when the said principle is not followed in this case, I am of the view that a strong prima facie case has been made out by the plaintiffs in so far as their challenge against the expulsion is concerned. Immediate disciplinary measure contemplated under sub clause (5) of Article XXX does not mean that such immediate measure dispense with the mandatory procedure contemplated under Article XIII sub clause (I) (e) and XXX sub clause (10). Therefore, I am not able to appreciate the

contention of the respondents in this aspect.

26. Considering all these aspects more particularly on the admitted position of facts, I find a strong prima facie case in favour of the applicants. The balance of convenience is also in their favour since they are functioning in this party as members all along and they were expelled from the party without even issuing a show cause notice and calling for explanation. Whether the action of the plaintiffs is an anti party activity or not, is to be considered and decided by the Disciplinary Authority only after receiving and considering their explanation and hearing them in person. That is why, clause (5) of Article XXX contemplates that the disciplinary action can be taken only when other methods including methods of persuasion have failed to correct the person concerned. Needless to say that persuasion and consequent failure would arise only when the person against whom action is contemplated is called upon and informed of what was the action which need to be corrected by him. In this case, it has not been done. Further, it is seen that the respondents have not placed any proceedings before this court showing the explanation of these applicants except the press statement issued by the second defendant. No doubt, it is contended by the defendants that the expulsion was ratified by the State Council in its meeting held on

26.04.2015. Needless to say that only an action taken legally by a person not otherwise competent, can be ratified later by the competent authority. In this case, the very expulsion is in violation of principles of natural justice. Thus, it is bad from its very inception. Therefore, the subsequent ratification by the State Council will not cure the illegality.

27. The learned Senior Counsel appearing for the applicants relied on **AIR 1963 SC 1144, (T.P.Daver vs Lodge Victoria)**, wherein at paragraph Nos.4 and 8 it has been held as follows:

"4. The source of the power of associations like clubs and lodges to expel their members is the contract on the basis of which they become members. This principle has been restated by Lord Morton in *Bonsor v. Musicians' Union*. There, one Bonsor, who became a member of a trade union, was expelled. In that context Lord Morton observed :

"When Mr. Bonsor applied to join the respondent union, and his application was accepted, a contract came into existence between Mr. Bonsor and the respondent, whereby Mr. Bonsor agreed to abide by the rules of the respondent union, and the union impliedly agreed that Mr. Bonsor would not be excluded by the union or its officers otherwise than in accordance with the rules".

This contractual origin of the rule of expulsion has its corollary in the cognate rule that in expelling a member the conditions laid down in the

rules must be strictly complied- with. In *Maclean v. The Workers' Union*, the contractual foundation of the power is described thus :

"In such a case as the present, where the tribunal is the result of rules adopted by persons who have formed the association known as a trade union, it seems to me reasonably clear that the rights of the plaintiff against the defendants must depend simply on the contract, and that the material terms of the contract must be found in the rules".

Proceeding on that basis, the learned Judge observed:

"It is certain, therefore, that a domestic tribunal is bound to act strictly according to its rules and is under an obligation to act honestly and in good faith."

The same idea was expressed by the Calcutta High Court in *Ezra v. Mahendra Nath Banerji* thus :

"..... Where the rule provides in any particular respect that some condition must be fulfilled, then that condition must be strictly complied with, since the power of expulsion is itself dependent on the terms of the rule."

..8. The following principles may be gathered from the above discussion. (1) A member of a masonic lodge is bound to abide by the rules of the lodge; and if the rules provide for expulsion, he shall be expelled only in the manner provided by the rules. (2) The lodge is bound to act strictly according to the rules, whether a particular rule is mandatory or directory falls to be decided in each case, having regard to the well settled rules of construction in that regard. (3)

The jurisdiction of a civil court is rather limited; it cannot obviously 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 or does not act in good faith or acts in violation of the principles of natural justice as explained in the decisions cited supra. "

28. In 2007 (6) SCC 130, (**D. Dwarakanath Reddy vs Chaitanya Bharathi Educational Society**), the Apex Court has observed at paragraph No.24 as follows:

"24. We are afraid the ratio laid down in *Daver*, AIR 1963 SC 1144 does not apply to the facts of the case. In the instant case, the controversy does not relate to expulsion of a member. The question is whether the appellants can be said to have been legally admitted as Promoter-Members. 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, calling for explanation and affording reasonable opportunity of being heard. The case of the Society, however, is that appellants were never legally inducted as Promoter-Members and their so called induction was not in consonance with law. The said issue is yet to be decided. In our opinion, therefore, *Daver* is of no assistance to the appellants at this stage. [See also *Board of*

(1) SC 235] "

29. Therefore, this Court finds that if no interim order is granted as sought for, it would certainly cause an irreparable injury to the applicants, as their right to function as members has been taken away without following the due procedure. Accordingly, Original Application No.503 of 2015 is allowed.

30. In the result, Original Application No.502 of 2015 is dismissed and Original Application No.503 of 2015 is allowed.

sd/.K.R.C.B.J
21.08.2015

//Certified to be a true copy//

Dated this the day of 2015.

R.s/05.11.2015

सत्यमेव जयते

COURT OFFICER

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