

Reserved on : 16.06.2016

Delivered on : 21.06.2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.1237 of 2016 and
C.M.P.Nos.6752, 6753, 7171,
7115 & 7116 of 2016

S.Karthikeya Balaji

... Petitioner

Vs.

- 1.Lions Club International District 324 A 1
represented herein by its District Governor
G.M.Balaji Rathnam,
No.242, Kilpauk Garden Road, Kilpauk,
Chennai - 600 010.
- 2.Lions Club International
represented herein by its
Executive Administrator & Secretary
Scott Drumheller,
300, W 22nd Street, Oak Brook,
Illinois 60523,
United States of America.
- 3.Lions Club International ISAAME Secretariat
represented herein by its
International Secretary Nevile A.Mehta,
No.19, Nirlon House,
4th Floor, 254-B, Dr.Annie Besant Road,
Worli, Mumbai - 4000 030.

4.K.S.Babai

5.N.S.Sankar

6.MJF Lion Mr.V.S.B.Sunder

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order passed by the V Assistant Judge, City Civil Court, Chennai dated 05.04.2016 in O.S.No.4656 of 2015 allowing the application filed under Section 8 of the Arbitration and Conciliation Act, 1996.

For Petitioner : Mr.A.Gunaseelan

For Respondents : Mr.R.Muthukumarasamy, Senior Counsel
for Mr.Thiyageswaran
for Waraon and Sai Rams Associates (R1)

Mr.V.Lakshmi Narayanan,
for Mr.A.Thiagarajan (R4)

Ms.Ajmad Begum (R3)

Ms.Christina (R2 & R5)

Mr.N.Sivaprakash (R6)

ORDER

Challenging the fair and final order passed in I.A.No.685 of 2016 in O.S.No.4656 of 2015 on the file of the V Assistant Judge, City Civil Court, Chennai, the plaintiff has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.4656 of 2015 for declaration and permanent injunction.

3.In the said suit, the 3rd defendant filed an application in I.A.No.685 of 2016 under Section 8 of the Arbitration and Conciliation Act, 1996 to refer the parties to Arbitration in terms of the Arbitration Clause contained in Article IV Section 4 of the Constitution and By-laws of the Lions Club International.

4.In the affidavit filed in support of the petition, the 3rd defendant has stated that the suit itself is not maintainable for the simple reason that the Constitution of the Lions Club stipulates Arbitration of all disputes and complaints relating to the interpretation of the Constitution and By-laws by the Multiple District Council, therefore, the suit filed by the plaintiff for declaration and injunction is not maintainable before the Civil Court and that the dispute can be resolved only by the Arbitrator as stated under Article VI Section 1 of the Constitution and By-laws.

4.The plaintiff filed his counter disputing the averments stated in the

affidavit filed in support of the petition stating that under Section 8 of the Arbitration and Conciliation Act, there must be a valid Arbitration Agreement between the parties under Section 7 of the said Act. Further, he has stated that Article VI Section 4 is misconceived and equally misplaced with reference to Article XV. The plaintiff has stated that the provisions of Article VI and Article XV speak about the internal alternate dispute resolution mechanism, which does not prohibit or restrain a member from resorting to Court of law. Further, the plaintiff has stated that in paragraph-20 of the plaint he has stated how the “internal dispute mechanism” miserably failed, forcing the plaintiff to come before the Civil Court. The plaintiff has also stated that the Constitution and By-laws of the Lions Club International, Multiple or District or the individual Clubs can at best be a contract between the club and members regulation and it cannot be a Arbitration Agreement, therefore, the provisions of Section 8 of the Arbitration and Conciliation Act are not applicable.

5. In the reply filed by the 3rd defendant, they have stated that the By-laws of an Association is a contract between the Association and the members, which contains a clear Arbitration Clause to resolve the internal disputes. Therefore, according to the 3rd defendant, the contract viz., By-laws, which contains the Arbitration Clause is well within the ambit of

Section 8 of the Arbitration and Conciliation Act.

6.The trial Court, after taking into consideration the case of both parties, allowed the application and the parties were referred to Arbitration in terms of the Arbitration Clause in Article VI Section 4 of the Constitution and By-laws of the Lions Club International.

7.Aggrieved over the fair and decreetal order passed by the trial Court, the plaintiff has filed the above Civil Revision Petition.

8.Heard Mr.A.Gunaseelan, learned counsel appearing for the petitioner, Mr.R.Muthukumarasamy, learned Senior Counsel for the 1st respondent, Mr.V.Lakshmi Narayanan, learned counsel for the 4th respondent, Ms.Ajmad Begum, learned counsel for the 3rd respondent, Ms.Christina, learned counsel for the respondents 2 & 5 and Mr.N.Sivaprakash, learned counsel for the 6th respondent.

9.The learned counsel appearing for the petitioner submitted that since the internal alternate dispute resolution mechanism had failed, there is no bar for the plaintiff to approach the Civil Court seeking for the relief sought for in the plaint. Further, the learned counsel submitted that in paragraph-20 of the plaint, the plaintiff had categorically stated how the

internal dispute mechanism had failed, forcing the plaintiff to come before the Civil Court. The learned counsel submitted that in the absence of valid Arbitration Agreement as stated in Section 7 of the Arbitration and Conciliation Act, the 3rd defendant cannot invoke Section 8 of the Arbitration and Conciliation Act to refer the dispute for arbitration.

10. In support of his contention, the learned counsel relied upon an unreported judgment dated 22.07.2015 made in Application No.317 of 2015 in C.S.No.682 of 2014, wherein this Court held as follows:

“29. In this case, the Bye-laws of the first defendant-Society do not deal with the procedures for challenging the elections. In other words, there is no specific bar in the Bye-laws for filing a suit for challenging the elections. Equally, the Bye-laws do not contemplate that such challenge should be made only by the contesting candidates by filing an Election Petition. The relevant statutory provision, namely Section 36 of the Tamil Nadu Societies Registration Act, also is not empowering the Registrar of Co-operative Societies to go into the election dispute. In fact, the very same issue was considered by me in a recent decision decided on 15.07.2015 in O.A.No.411 of 2015 and Application Nos.4053 and 2853 of 2015 in C.S.No.309 of 2015, wherein it has been observed in paragraphs 20 to 23 as follows:

“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 of the Representation of the People Act which 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."

31. In the above decision in O.A.No.411 of 2015, etc., this Court has also found that a member or voter of a Society/Association has a right to challenge the elections in the absence of specific bar either in the Bye-laws or under the statutory provisions. This Court has also distinguished the elections governed under the Representation of People Act and

the elections governed by the specific statutes or the Bye-laws. Therefore, in my considered view, the present case also will fall under the same line, namely as decided by this Court in the above decision.”

11.Mr.R.Muthukumarasamy, learned Senior Counsel appearing for the 1st respondent/3rd defendant submitted that in view of the provisions of the Constitution and By-laws of the Lions Club International, the trial Court had rightly allowed the application filed under Section 8 of the Arbitration and Conciliation Act. Further, the learned senior counsel submitted that when the Constitution clearly stipulates the arbitral proceedings, if any dispute arose between any member or club with reference to any matter pertaining to the administration or otherwise, without exhausting such remedy, no member or Club is entitled to approach the Court of law. The learned senior counsel submitted that the provisions of Article VI of the Constitution and By-laws are binding on all members, therefore, the order passed by the trial Court is just and proper.

12.In support of his contentions, the learned senior counsel relied upon the following judgments:

(i)2012 (4) CTC 748 [International Air Transport Association (IATA), No.77, Robinson Road, No.05-00 SAI Building Singapore - 068896

rep by its Director General and others Vs. All India Travel Agency (Madurai) Private Ltd., No.B-6, Basement, Gemini Parsn Commercial Complex, Chennai - 600 006, rep by its Managing Director, Mr.V.L.Jaghannathan and others] wherein this Court held as follows:

“20.Keeping this Principle in mind, if we go through the clauses in the Agreement, Resolution and T.A. Handbook, I am of the opinion that the intention of the parties is that in case of any dispute, the same has to be referred to the Travel Agency Commissioner and on rendering a decision, the same has to be referred to the Arbitrator. Moreover, the dispute in this case is also only with regard to the period of payment remittance and such a dispute could be decided by the Travel Agency Commissioner himself. Therefore, I am of the opinion that the intention of the parties to the agreement at the time of entering into the contract is only to refer the disputes to the Travel Agency Commissioner and thereafter, to the Arbitration proceedings. Therefore, the Plaintiffs, by taking advantage of the wordings, cannot bypass the remedy available under the said Agreement. Moreover, the judgment relied upon by the Plaintiffs has been delivered under Section 11 of the Arbitration Act in exercising power of the Hon'ble Chief Justice or by his designate. But in the instant case, the present Application has been filed under Section 8 of the Arbitration Act praying this Court to refer the parties to arbitration since there is a clause in the Agreement. This Court could be gathered the intention of the parties to refer

the matter to the arbitration in accordance with the procedures stipulated under the clauses of the Agreement and Resolution. Under such circumstances, I am of the opinion that the Suit is not maintainable.”

(ii)(2009) 2 Supreme Court Cases 55 [Visa International Limited Vs. Continental Resources (USA) Limited] wherein the Hon'ble Supreme Court held as follows:

“16.The Court is required to decide whether the existence of an agreement to refer the dispute to arbitration can be clearly ascertained in the facts and circumstances of the case. This, in turn, may depend upon the intention of the parties to be gathered from the correspondence exchanged between the parties and the surrounding circumstances.

17.In the instant case, the respondent while rejecting the names suggested by the applicant for resolution of the disputes by the arbitrator never disputed the existence of the arbitration clause. The applicant vide letter dated 20-9-2006 in response to the respondent's letters dated 7-9-2006, 8-9-2006, 13-9-2006 and 15-9-2006 and duly placing reliance upon the MoU dated 14-2-2005 and agreement dated 15-2-2005 asserted that agreement entered into between the parties provided for resolution of all disputes by arbitration. The applicant accordingly expressed its willingness to refer the matter to arbitration. The respondent in its reply dated 25-9-2006 stated that referring the matter for arbitration “is

irrelevant and inappropriate” in absence of any valid agreement, inasmuch as the MoU dated 14-2-2005 was itself conditional and not effective. The respondent did not dispute the existence of a valid arbitration clause in the agreement. The plea was that agreement entered into between the parties on 15-2-2005 itself was not a valid one.

18. That an arbitration agreement is not required to be in any particular form has been reiterated in more than one decision. [*Bihar State Mineral Development Corpn. v. Encon Builders (I) (P) Ltd. (2003) 7 SCC 418*] What is required is to gather the intention of the parties as to whether they have agreed for resolution of the disputes through arbitration. What is required to be decided in an application under Section 11 of the Act is whether there is any arbitration agreement as defined in the Act? It needs no reiteration that Section 7 of the Act does not prescribe any particular form and it is immaterial whether or not expression “arbitration” or “arbitrator” or “arbitrators” has been used in the agreement.”

(iii) 2005 (4) CTC 297 [*Shin-Etsu Chemical Co. Ltd. Vs. M/s. Aksh Optifibre Ltd and another*] wherein the Hon'ble Supreme Court held as follows:

“6. Under the Old Arbitration Act (Section 34 of Arbitration Act, 1940), Court had discretion in the matter of grant of stay of legal proceedings where there was an

arbitration agreement on being satisfied that the arbitration agreement exists factually and legally and disputes between the parties are in regard to the matter agreed to be referred to arbitration. The Court in exercise of its discretion could also decline an order of stay despite existence of aforesaid conditions, depending upon the facts and circumstances of the case. The discretion was, however, required to be exercised on well settled judicial principles. Section 8 of the Act is a departure from Section 34 of the old Act. Under this section judicial authority has no discretion. It is mandatory for the judicial authority to refer the parties to arbitration on the existence of conditions stipulated in the section. Unlike Section 45, the judicial authority under Section 8 has not been conferred the power to refuse reference to arbitration on the ground of invalidity of the agreement. It is evident that the object is to avoid delay and accelerate reference to arbitration leaving the parties to raise objection, if any, to the validity of the arbitration agreement before the arbitral forum and/or post award under Section 34 of the Act. Dealing with the statement of object and reasons of the Act, this Court in *Konkan Railway Corpn. Ltd. & Ors. v. Mehul Construction Co.*, 2000 (3) CTC 686 : 2000 (7) SCC 201 said:

"... At the outset, it must be borne in mind that prior to the 1996 Act, the Arbitration Act of 1940, which was in force in India provided for domestic arbitration and no provision was there to deal with the Foreign Awards. So far as the Foreign Awards are concerned, the same were being dealt with by the Arbitration (Protocol and

Convention) Act, 1937, and the Foreign Awards (Recognition and Enforcement) Act, 1961. The increasing growth of global trade and the delay in disposal of cases in Courts under the normal system in several countries made it imperative to have the perception of an alternative Dispute Resolution System, more particularly, in the matter of commercial disputes. When the entire world was moving in favour of a speedy resolution of commercial disputes, the United Nations Commission on International Trade Law way back in 1985 adopted the Uncitral Model Law of International Commercial Arbitration and since then, number of countries have given recognition to that Model in their respective legislative system. With the said Uncitral Model Law in view the present Arbitration and Conciliation Act of 1996 has been enacted in India replacing the Indian Arbitration Act, 1940, which was the principal legislation on Arbitration in the country that had been enacted during the British Rule and the growing volume of India's trade and commercial relationship with the rest of the world after the new liberalisation policy of the Government, Indian Parliament was persuaded to enact the Arbitration and Conciliation Act of 1996 in Uncitral Model and, therefore, in interpreting any provisions of the 1996 Act Courts must not ignore the objects and purpose of the enactment of 1996. A bare comparison of different provisions of the Arbitration Act of 1940 with the provisions of the Arbitration and Conciliation Act, 1996

would unequivocally indicate that 1996 Act limits intervention of Court with an arbitral process to the minimum and it is certainly not the legislative intent that each and every order passed by an authority under the Act would be a subject matter of judicial scrutiny of a Court of Law. Under the new law the grounds on which an award of an Arbitrator could be challenged before the Court have been severely cut down and such challenge is now permitted on the basis of invalidity of the agreement, want of jurisdiction on the part of the Arbitrator or want of proper notice to a party of the appointment of the Arbitrator or of Arbitral proceedings. The powers of the Arbitrator have been amplified by insertion of specific provisions of several matters. Obstructive tactics adopted by the parties in arbitration proceedings are sought to be thwarted by an express provision inasmuch as if a party knowingly keeps silent and then suddenly raises a procedural objection will not be allowed to do so. The role of institutions in promoting and organising arbitration has been recognised. The power to nominate Arbitrators has been given to the Chief Justice or to an institution or person designated by him. The time limit for making awards has been deleted. The existing provisions in 1940 Act relating to arbitration through intervention of Court, when there is no suit pending or by order of the Court when there is a suit pending, have been removed. The importance of transnational commercial arbitration has been recognised

and it has been specifically provided that even where the arbitration is held in India, the parties to the contract would be free to designate the law applicable to the substance of the dispute. Under the new law unless the agreement provides otherwise, the Arbitrators are required to give reasons for the award. The award itself has now been vested with status of a decree, inasmuch as the award itself is made executable as a decree and it will no longer be necessary to apply to the Court for a decree in terms of the award. All these aim at achieving the sole object to resolve the dispute as expeditiously as possible with the minimum intervention of a Court of Law so that the trade and commerce is not affected on account of litigations before a Court. When United Nations established the Commission on International Trade Law it is on account of the fact that the General Assembly recognised that disparities in national laws governing international trade created obstacles to the flow of trade. The General Assembly regarded the Commission on International Trade Law as a medium which could play a more active role in reducing or removing the obstacles. Such Commission, therefore, was given a mandate for progressive harmonization and unification of the law of International Trade. With that objective when Uncitral Model has been prepared and the Parliament in our country enacted the Arbitration and Conciliation Act of 1996 adopting Uncitral Model, it would be appropriate to bear the said objective in mind while

interpreting any provision of the Act. The Statement of Objects and Reasons of the Act clearly enunciates that the main objective of the legislation was to minimise the supervisory role of Courts in the arbitral process...”

(iv)An unreported order dated 02.05.2005 made in Special Leave to Appeal (Civil) No.8587/2005 passed by the Hon'ble Supreme Court of India, which reads as follows:

“In the matter of disputes relating to clubs, ordinarily Civil Courts do not interfere and the disputes should be left to be adjudicated upon by the internal mechanism provided by the constitution of the club. No fault can be found with the view taken by the High Court.

The Special Leave Petition is dismissed.”

13.Mr.V.Lakshmi Narayanan, learned counsel appearing for the 4th respondent also relied upon the provisions of Article VI and Article XV of the Constitution and By-laws and submitted that the trial Court had rightly allowed the application and referred the dispute for arbitration.

14.In support of his contentions, the learned counsel relied upon the following judgments:

(i)(1964) 1 SCR 1 : AIR 1963 SC 1144 [T.P.Daver Vs. Lodge Victoria No.363, S.C.Belgaum and others] wherein the Hon'ble Supreme

Court held as follows:

“7. Another aspect which may also be noticed is how far and to what extent the doctrine of bias may be invoked in the case of domestic tribunals like those of clubs. The observations of Maugham, J. in *Maclean case* [LR (1929) 1 Ch D 602, 623] in this context may be noticed. The learned Judge observed in that case thus:

“A person who joins an association governed by rules under which he may be expelled, ... has in my judgment no legal right of redress if he be expelled according to the rules, however unfair and unjust the rules or the action of the expelling tribunal may be, provided that it acts in good faith.... The phrase, ‘the principles of natural justice’, can only mean in this connection the principles of fair play so deeply rooted in the minds of modern Englishmen that a provision for an inquiry necessarily import that the accused should be given his chance of defence and explanation. On that point there is no difficulty. Nor do I doubt that in most cases it is a reasonable inference from the rules that if there is anything of the nature of a lis between two persons, neither of them should sit on the tribunal.”

Another difficulty that one is confronted with in proceedings held by committees constituted by clubs is to demarcate precisely the line between the prosecutor and the Judge. Maugham, J. noticed this difficulty and observed in *Maclean case* [LR (1929) 1 Ch D 602, 623] at p. 626 thus:

“In many cases the tribunal is necessarily entrusted with the duty of appearing to act as prosecutors as well as that of judges; for there is no one else to prosecute. For example, in a case where a council is charged with the duty of considering the conduct of any member whose conduct is disgraceful and of expelling him if found guilty of such an offence, it constantly occurs that the matter is brought to the attention of the council by a report of legal proceedings in the press. The member is summoned to appear before the council. The council's duty is to cause him to appear and to explain his conduct. It may be that in so acting the council are the prosecutors. In one sense they are; but if the regulations show that the council is bound to act as I have mentioned and to that extent to act as prosecutors, it seems to be clear that the council is not disqualified from taking the further steps which the rules require.”

Though it is advisable for a club to frame rules to avoid conflict of duties, if the rules sanction such a procedure, the party, who has bound himself by those rules, cannot complain, unless the enquiry held pursuant to such rules discloses mala fides or unfair treatment.”

(ii)(2011) 10 Supreme Court Cases 106 [Lalit Kumar Modi Vs. Board of Control for Cricket in India and others], wherein the Apex Court held as follows:

“37.The Rules lay down the terms of the contract amongst the members of the society, and the terms can be altered only with the consent of the members concerned. As far as this submission is concerned, we must note that firstly, the Rule does not say that if the President cannot be a member of the Committee no substitution shall take place, nor does it say that the substituting member should be one not objected by the delinquent against whom the enquiry is proposed. This rule is being canvassed as a term of the contract of membership. A member of the society having accepted the rules, agrees to the disciplinary authority of the three-member Committee which is to be constituted under these Rules. He cannot claim a right to dictate as to who should be the members of the Committee. Any such interpretation will lead to a situation that the delinquent will decide as to who should be the members of the Disciplinary Committee. Such a submission cannot be accepted. In our understanding the rule is elastic enough, and in an appropriate situation the word “shall” can be read as “may”. It is very clear that, normally the President shall be a member of three-member Committee, but if for any reason his presence on the Committee is objected to on grounds of unfairness, and he recuses himself therefrom, Respondent 1 certainly has the power to substitute him by some other person. The action of the respondents is sought to be defended on the basis of necessity.”

(iii)An unreported judgment of the Delhi High Court dated 22.03.2005 reported in (2005) 140 PLR 1 [Shri Ramesh Chander Vs. Shri Suresh Bhasin and others] reads as follows:

“18. To sum up, the election procedure is prescribed in the Rotary International Manual which is a Code in itself. The election disputes are also governed by the Manual. The decision of the RI Board was appealable as per the Manual. The respondent No. 1 rushed to the Civil Court without exhausting the remedy available to him in terms of the Manual. The lower appellate Court has granted final relief to respondent No. 1 contrary to the settled law that final relief cannot be granted at the interim stage unless there are special circumstances to warrant grant of the same. Special circumstances have not been made out in this case. The lower appellate Court, by granting an injunction, has set at naught the order of the RI Board without adjudicating the issues raised in the plaint. It is to be noted that the term of the District Governor comes to an end on 30th June, 2005 whereas the lower appellate court has granted relief permitting the respondent No. 1 to continue as the District Governor till disposal of the suit. Perversity is writ large on the face of the record. The lower appellate court has also lost sight of the fact that the Club of the petitioner was not a suspended club as on 28.9.2002 and the petitioner was eligible at the lime of selection. The findings of the first appellate court to the contrary are perverse. The lower appellate court has in fact substituted its own findings without first deciding how the

reasoning of the trial court was wrong. At the interlocutory stage, the Court has to see whether there are any equities that flow in favor of the aggrieved party. The facts of the present case did not warrant an order of injunction as there were no equities in favor of respondent No. 1 for the reason that the election of respondent No. 1 having been declared null and void, he stood disqualified and the petitioner was selected as the District Governor. The decision of the RI Board was not assailed by following the election procedure and at this stage the grant of injunction without adjudicating upon the issues raised in the suit was not justified. Findings of malafides against the Rotary International without there being any material or pleadings on record transcends the settled law of the land and borders on perversity to warrant relief.”

15.Mr.N.Sivaprakash, learned counsel appearing for the 6th respondent supported the case of the plaintiff in this petition and submitted that the trial Court ought not to have referred the dispute for Arbitration and the trial Court itself should have decided the dispute between the parties.

16.On a careful consideration of the materials available on record, the submissions made by the learned counsel appearing for the respective parties and also the judgments relied upon by the respective learned counsel, it could be seen that the suit has been filed for the following

reliefs:

“A. Declaring the order dated 08.05.2015 of the 1st defendant pursuant to its directives dated 28.04.2015, cancelling the Charter of plaintiffs parent club 'Chennai Ponmalar Lions Club' No.10432 as null and void in law;

B. Declaring that the proceedings of the reconvened 32nd Annual District Convention of District 324 A 1 held on 24.05.2015 at Karnataka Sangha in so far as it related to the new business of balloting by delegates from Campus Clubs as null and void in law;

C. Declaring that the election of the 5th defendant K.S.Babai as Second Vice District Governor of District 324 A 1 as null and void in law;

D. For a permanent injunction restraining the 1st and 3rd defendants from anywise giving effect to the order dated 08.06.2015 of the 1st defendant pursuant to its directives dated 28.04.2015 cancelling the Charter of plaintiffs parent Club 'Chennai Ponmalar Lions Club' No.10432;

E. For a permanent injunction restraining the 1st and 3rd defendants from anywise permitting the 4th defendant from discharging her duties as the Second Vice District Governor of Lions Club International District 324 A1 for the Lionistic year 2015-2016; and

F. For costs.”

17. The 3rd defendant mainly relied upon Article VI Section 1 of the Constitution and By-laws of the Lions Club International and contended that all disputes and complaints relating to the interpretation of these Constitution and By-laws shall be decided by the Multiple District Council. Since the issue involved in the present Civil Revision Petition revolves around Article VI and Article XV of the Constitution, it would be appropriate to extract Article VI and Article XV of the Constitution, which reads as follows:

“Article - VI

Powers of the Multiple District Council

Section - 1

Subject to the control and supervision of Lions Clubs International, the provisions of the constitution and By-laws of The International Association of Lions Clubs and the Policies formulated from time to time by the Board of Directors of the said association, the Multiple District Council shall have the

following powers.

(a) The Multiple District Council shall appoint various Committees for administration and activities with specific terms to carry out the programmes of the Lions Clubs International, Multiple and the Sub-Districts and shall exercise control over the officers, agents and Committees appointed either by the Council or by the Multiple District Convention.

(b) All properties, business and funds of the Multiple District shall be managed and controlled by the Council.

(c) The Council shall have jurisdiction, control and supervision over all phases of the convention and all meeting of the Multiple District.

(d) All disputes and complaints relating to the interpretation of these Constitution and By-laws shall be decided by the Multiple District Council.

While deciding such questions and complaints, the Council shall be entitled to consult or co-opt any legal expert of its choice and shall communicate its decision in the form of a resolution to the contesting parties. If such decision is not satisfactory to contesting party or parties, the matter may be referred to Lions Clubs International whose decision shall be final.

Section - 2

In case of dispute of any matter at the club, District or Multiple District level, the procedure set out by the Lions Clubs International shall be followed.

Section - 3

(a) Have original jurisdiction, when authorized under policy of the international board of directors and under rules of procedure prescribed by said board, to hear and rule upon any complaint of a constitutional nature raised by any sub-district or districts, and Lions Club, or any member of a Lions Club, in the multiple district. All such rulings of the Council of Governors shall be subject to review and decision by said international board.

(b) Have control and management of all budgetary matters of the multiple district and committees of the multiple district and multiple district convention, No obligation may be approved or made which shall effect an unbalanced budget or deficit in any fiscal year.

Section - 4

(a) Any member of the clubs or the club shall exhaust all the remedies available at the club, District, Multiple and International Constitution and By-laws before going to the Court of law.

(b) If any member of the clubs approaches the Court of law against the club, District, Multiple and International without exhausting the remedies available within the organization such member shall be removed by the club from the membership of the club and if the club fails to remove such members from the rolls of the club membership, that club should be recommended to be placed under status quo by the District

Governor.

(c) In case the club, if it approaches the Court without exhausting the Constitution remedies available under the District, Multiple and International Constitution and By-laws the club shall be recommended to be placed under status quo.

...

Article - XV

Election Complaints

Section - 1

The following rules of procedure shall apply for hearing Constitutional complaints concerning District Governor/First and Second Vice District Governor elections irregularities:

Document Distribution Guidelines: The party/parties to the complaint shall deliver all documents and related copies to the Legal Division at the International Office for distribution to the members of the Constitution and By-laws Committee and the International Board of Directors. The party/parties to the complaint process shall not distribute documents directly to individual directors or executive officers.

A. Complaints

1. May be filed only by an unsuccessful candidate seeking election to the Office of District Governor/First or Second Vice District Governor at the district election being contested.
2. The initial notice of complaint, stating the reasons for the protest, must be received by fax, e-mail or other writing at the

International Office within five (5) business days of said election. PROVIDED, however, that formal complaint documents shall be submitted, in original form which shall conform to the format provided in Part E, by mail or courier service only within five (5) business days of the filing of the initial notice of complaint.

3. Must conform to the format in Part E.

4. District Governor election complaints must be accompanied by US\$750.00 filing fee, or its equivalent in the respective national currency. In the event the complaint is withdrawn prior to the meeting at which the complaint is reviewed by Constitution and By-laws Committee of the International Board of Directors, US\$100.00 shall be retained by the International Office as an administrative fee and US\$325.00 shall be refunded to the complainant and US\$325.00 shall be paid to the respondent (which shall be shared on an equal basis if there is more than one respondent). In the event the International Board of Directors finds the complaint to have merit and the complainant is upheld, US\$250.00 shall be retained by the International Office as an administrative fee and US\$500.00 shall be refunded to the complainant. In the event the International Board of Directors denies the complaint, the filing fee will not be refunded.

5. First and Second Vice District governor election complaints must be accompanied by US\$750.00 filing fee, or its equivalent in the respective national currency. In the event the complaint is withdrawn prior to the consideration of the complaint by the International Board of Directors, US\$100.00 shall be retained by

the International Office as an administrative fee and US\$325.00 shall be refunded to the complainant and US\$325.00 shall be paid to the respondent (which shall be shared on an equal basis if there is more than one respondent). In the event the International Board of Directors finds the complaint to have merit and the complainant is upheld, US\$250.00 shall be retained by the International Office as an administrative fee and US\$500.00 shall be refunded to the complainant. In the event the International Board of Directors denies the complaint, the filing fee will not be refunded.

6. Copy of the complaint and any supporting documentation must be forwarded by complainant at the same time and by the same method of communication to the party/parties complained of. Upon receipt of any such complaint, the Legal Division, where feasible, may furnish a copy of the complaint to said party/parties. In no event shall this relieve the complainant of his/her responsibility. Verification of forwarding the complaint to the party/parties complained of shall be produced with the filing of the complaint.

Failure to provide verification may result in the complaint being returned as non-complaint or being denied.

B.Response

1. Response to the complaint must originate from party/parties complained of only and shall conform to the format provided in Part E herein and be received in its original form by mail or by courier service at the International Office within the time permitted as set by the Legal Division, which shall be no less

than 10 days from date of request. PROVIDED, however, the general counsel in consultation with the Chairperson of the Constitution and By-laws Committee may permit for good cause the faxing of said response and/or extend by five (5) additional days the filing date of any response.

2. The response shall include a copy of the official minutes of the convention where the election was conducted, and copies of any applicable district constitution and By-laws and convention election rules and/or voting requirements. The minutes shall include a report of The District Convention election procedures and voting results, and shall be certified as to accuracy by the District Governor and District Cabinet Secretary. The Legal Division may require additional documents in response to the complaint. Such documents shall be submitted within the time permitted as set by the Legal Division, which shall be no less than 10 days from date of request.

3. Copy of the response and any supporting documentation must be forwarded by the responding party at the same time and by the same method of communication to the complainant. Upon receipt of any such response, the Legal Division, where feasible, may furnish a copy of the response to said party/parties. In no event shall this relieve the complainant of his/her responsibility. Verification of forwarding the response to the complainant shall be produced with the filing of the response. Failure to provide verification may result in the response being returned as noncomplaint or being denied.

C. Reply to Response

1. A reply to the response may be filed by the complaining party and must be received by mail or by courier service at the International Office within five (5) business days after receipt of the response. A reply shall be limited to five (5) pages in accordance with the format requirements provided in Part E herein. No additional documents will be accepted. The reply should address issues raised, if any, in the response and must not repeat allegations already contained in the complaint.
2. Copy of the reply must be forwarded by complainant at the same time and by the same method of communication to the party/parties complained of. Upon receipt of any such response, the Legal Division, where feasible, may furnish a copy of the reply to said party/parties. In no event shall this relieve the complainant of his/her responsibility. Verification of forwarding the reply to the party/parties complained of shall be produced with the filing of the reply. Failure to provide verification may result in the reply being returned as non-complaint or being denied.

D. Response from Non-Party

The Legal Division may consider that any response or input from anyone other than a party to the complaint as peripheral and/or non-complying and may be returned and/or acknowledged as such.

E. Format of Complaint, Response and Reply

1. The original complaint shall contain the following parts in

the order listed:

- (a) Statement of facts necessary to the understanding of the complaint, stated accurately and fairly;
- (b) argument containing the contentions of the party/parties and reasons therefore;
- (c) a short conclusion stating the relief sought.

2. The text of every document including any appendix shall appear in 12 point or larger type (pica type, 10 pitch if typewritten). Footnotes shall appear in 9 point or larger type (elite type, 12 pitch if typewritten). Documents may not be reduced or typeface condensed to increase content of document. Photographically reduced documents shall not be considered and shall be returned to the sender. Every document shall be produced on opaque paper 8-1/2 by 11 inches, or A/4, double-spaced with three-fourths (3/4) inch margin on all sides and shall be stapled or bound at the upper left hand corner. Documents may be printed on one side of the page only.

3. The complaint and response shall not exceed ten (10) pages with five (5) optional pages of support documentation, and the reply to the response shall not exceed five (5) pages and no additional documentation will accepted. Each page shall be numbered sequentially as part of the total page limit (for example, page one of ten, page two of ten). Requests to exceed these page limits, or otherwise additional supporting documents, will be denied. Exclusive of page limitations, a single cover page must contain from the top of the page:

- (a) the district number;
- (b) the name, address, e-mail address and fax number of the complaining party;
- (c) name, address, e-mail address and fax number of the party (ies) complained of;
- (d) election date; and,
- (e) election results including vote tabulation.

4. At the close of the document submitted, the original signature of the party submitting the document shall appear directly below the following statement: "I hereby agree that the decision of the International Board of Directors shall be final and binding". In addition, each page of the document shall be initialed by the submitting party.

5. The Legal Division shall not accept for consideration any document that is not in compliance with these guidelines but shall return it indicating to the party any failure to comply. The document, however, shall be deemed timely filed provided that a proper document is substituted promptly. The International Board of Directors, through the Constitution and By-laws Committee, may refuse to consider any resubmitted document not filed in accordance with these guidelines. The International Board of Directors shall not be required to consider any complaint, response to said complaint, or reply to the response, which is not received in accordance with the above stated procedures or requirements. By filing a complaint, response or reply, the parties to the complaint agree to submit the matter for consideration by the International Board of

Directors and further agree to abide by any and all decisions of said Board. The decision of the International Board of Directors shall be final and binding.

6. Multiple Council may endeavor to mediate *the disputes*.

F. District Governors-Elect Seminar The parties involved in a district governor election complaint are not eligible to attend the Lions Clubs International District Governors-Elect Seminar until the International Board of Directors adopts the election results for the district in which the complaint has arisen and declares that such results have become effective, or unless otherwise approved by the incoming International President.

Each district (Single, Sub or Multiple) may determine what district level training the parties to the complaint may attend to prepare for the upcoming fiscal year pending the outcome of the complaint.”

18. On a perusal of the Article VI of the Constitution, it could be seen that under Section-1(d), all disputes and complaints relating to the interpretation of these Constitution and By-laws shall be decided by the Multiple District Council. Further, it has been stated that while deciding the questions and complaints, the Council shall be entitled to consult or co-opt any legal expert of its choice and shall communicate its decision in the form of a resolution to the contesting parties and if such decision is not satisfactory to contesting party or parties, the matter may be referred to

Lions Clubs International, whose decision shall be final. Further, under Section-2, in case of dispute of any matter at the Club, District or Multiple District level, the procedure set out by the Lions Clubs International shall be followed. Under Section-4 of Article VI, any member of the Clubs or the Club shall exhaust all the remedies available at the Club, District, Multiple and International Constitution and By-laws before going to the Court of law. Further, under Section-4 (b), it has been stated that if any member of the Clubs approaches the Court of law against the Club, District, Multiple and International without exhausting the remedies available within the organization, such member shall be removed by the Club from the membership of the Club and if the Club fails to remove such members from the rolls of the Club membership, that Club should be recommended to be placed under status quo by the District Governor. Under Section-4 (c) it has been stated that in the case of the Club approaching the Court without exhausting the Constitution remedies available under the District, Multiple and International Constitution and By-laws, the Club shall be recommended to be placed under status quo. Therefore, from Article VI, it is clear that all disputes and complaints relating to the interpretation of these Constitution and By-laws shall be decided by the Multiple District Council and under Section-4, it has been clearly stated that if any member of the Club approaches the Court of law without exhausting the remedies available

under the Constitution and By-laws, such a member shall be removed by the Club from the membership of the Club. Therefore, Article VI of the Constitution and By-laws clearly stipulates that the disputes shall be resolved only by way of Arbitration and not by the Civil Court.

19. The reasoning given by the plaintiff in paragraph-20 of the plaint are matter for evidence and when the plaintiff is bound by the Constitution and By-laws, he cannot take a stand that the internal alternate dispute resolution mechanism had failed. When the Constitution provides for Arbitration, the plaintiff should not have approached the Civil Court, without exhausting the remedies available under the By-laws. The contention that the plaintiff cannot be prevented from approaching the Civil Court and such a clause is hit by Section 28 of the Indian Contract Act, apart from the same being against public policy embodied under Section 23 of the Indian Contract Act, cannot stand for the reason that the plaintiff, being a member of the Club, is bound by the terms and conditions of the By-laws and he cannot say that the terms and conditions stated in the By-laws are against the provisions of Section 28.

20. The provisions of the Constitution and By-laws were not challenged

by the plaintiff. Unless the provisions of the Constitution and By-laws are declared as null and void or set aside, the plaintiff cannot contend that he is not bound by the terms of the By-laws. When the By-laws clearly stipulates that all disputes can be resolved only by way of Arbitration, the filing of the suit by the plaintiff for the reliefs stated above, cannot be entertained. The party, who has bound himself by the terms of the By-laws cannot complain, unless the enquiry held pursuant to such rules discloses *mala fides* or unfair treatment. An Arbitration Agreement is not required to be in any particular form and what is required is to gather the intention of the parties as to whether they had agreed for resolution of the disputes through Arbitration. Section 7 of the Act does not prescribe any particular form, it is immaterial whether or not expression “arbitration” or “arbitrator” or “arbitrators” has been used in the Agreement. A voluntary Association is entitled to carry on its affairs in accordance with its own rules and a person becoming member of such a body contracts to bound by those rules and by the actions taken by those in whom power is vested under the rules. The By-laws of the Club is a contract between the member and the Club, therefore, the plaintiff is bound by the rules made under the By-laws. When there is an Arbitration Clause in the Agreement, it is mandatory for the Civil Court to refer the dispute to the Arbitrator. The By-laws of the Lions Club International is an agreement between the member and the Lions Club and it is an enforceable

agreement and the rights under the By-laws are binding on the members and the plaintiff, being a member, is bound by the same. The ratios laid down in the judgments relied upon by the learned counsel for the respondents squarely applies to the facts and circumstances of the present case. Taking into consideration, all these aspects, the trial Court has rightly allowed the application.

21. In these circumstances, I do not find any error or irregularity in the order passed by the trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : No
Internet : Yes
va

21.06.2016

Note: Issue order copy on 22.06.2016.

To

The V Assistant Judge,
City Civil Court,
Chennai.

M.DURAISWAMY,J.
va

Order made in
C.R.P.(NPD).No.1237 of 2016 and
C.M.P.Nos.6752, 6753, 7171,
7115 & 7116 of 2016

21.06.2016