

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26-04-2016

PRONOUNCED ON : 11-05-2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P.(PD) Nos.369, 392 and 393 of 2016
and
C.M.P.Nos.1911, 2099 and 2100 of 2016

C.R.P.(PD) No.369/2016

1.M/s.Vellore Institute of Technology
A Public Charitable Trust having its
Registered office at
54, Tehnnamaram Street
Vellore 632 001
Rep by its Chairman &
Managing Trustee and Chancellor
Shri G.Viswanathan

2.G.Viswanathan
Managing Trustee
Vellore Institute of Technology
and Chancellor, VIT University
Katpadi-Tiruvalam Road
Vellore - 632 014

... Petitioners

vs.

1.G.V.Sampath
2.Sankar Viswanathan
3.Sekar Viswanathan
4.G.V.Selvam
5.P.L.Mareddy
6.Sundari Reddy
7.Sandya Penta Reddy

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 23.11.2015 passed in I.A.No.129 of 2014 in O.S.No.67 of 2014 on the file of Principal District Court at Vellore.

For Petitioners : Mr.T.R.Rajagopalan, Senior Counsel
Mrs.Chitra Sampathy, Senior Counsel
For Mr.A.Saravanan

For Respondents : Mr.V.Raghavachari for R1
Mr.G.Viswanathan for R2
Ms.Aarthi Madan for R3
Mr.N.Ganesh Kumar for R4
Mr.K.Purushothaman for R7

C.R.P.(PD) Nos.392 & 393/2016

G.V.Sampath

... Petitioner in both the
Revisions

Vs.

1.M/s.Vellore Institute of Technology
A Public Charitable Trust having its
Registered office at
54, Tehnnamaram Street
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Rep by its Chairman &
Managing Trustee and Chancellor
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2.G.Viswanathan
Managing Trustee
Vellore Institute of Technology
and Chancellor, VIT University
Katpadi-Tiruvalam Road
Vellore - 632 014

3.Sankar Viswanathan
Trustee
Vellore Institute of Technology
and Vice President, VIT University

Katpadi-Tiruvalam Road
Vellore - 632 014

4.Sekar Viswanathan
Trustee
Vellore Institute of Technology
and Vice President, VIT University
Katpadi-Tiruvalam Road
Vellore - 632 014

5.G.V.Selvam
Trustee
Vellore Institute of Technology
and Vice President, VIT University
Katpadi-Tiruvalam Road
Vellore - 632 014

6.P.L.Mareddy

7.Sundari Reddy

8.Sandya Penta Reddy

... Respondents in both the
Revisions

Civil Revision Petitions filed under Article 227 of the Constitution of India against the order and decretal order dated 23.11.2015 passed in I.A.No.127 of 2014 and 129 of 2014 in O.S.No.67 of 2014 on the file of Principal District Court at Vellore.

For Petitioner in both CRPs	: Mr.V.Raghavachari Mr.T.R.Rajagopalan, Senior Counsel Mrs.Chitra Sampathy, Senior Counsel For Mr.A.Saravanan
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For Respondents in both CRPs	: Mr.N.Ganesh Kumar for R1 & R2 Mr.G.Viswanathan for R3 Mr.A.Saravanan for R4 Ms.Aarthi Madan for R5 Mr.N.Ganesh Kumar for R8
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COMMON ORDER

The plaintiff G.V.Sampath is one of the sons of G.Viswanathan, the second defendant, who is the Founder and Managing Trustee of the first defendant Trust. The plaintiff and the other sons of Viswanathan (defendants 3 to 5) and the 8th defendant (wife of the 4th defendant) were also made Trustees of the first defendant Trust. The plaintiff was made the Vice President of the Board of Management of Vellore Institute of Technology (VIT University) run by the first defendant Trust. Due to efflux of time and also due to the non-preparedness of the other Trustees to allow him to continue as Vice President of the Board of Management of the said institution, his term as Vice President of the Board of Management of the Vellore Institute of Technology came to an end by 10.06.2013.

2. Thereafter alleging mismanagement, the plaintiff G.V.Sampath and one Sadhanandam filed a Scheme Suit on the original side of the Madras High Court in C.S.No.518/2013 invoking Section 92 of the Code of Civil Procedure praying for: (a) framing of a scheme for the proper conduct of the affairs of the first defendant Trust; (b) a direction for the removal of the defendants 3 to 11 therein, including G.Viswanathan, from Trusteeship of the first defendant Trust and appointment of an Administrator pending framing of the scheme; (c) a direction to the defendants therein to render true and proper accounts in respect of the first defendant Trust and Vellore

Institute of Technology (VIT University), the second defendant therein from the year 2001 till the date of taking accounts and (d) reinstatement of G.V.Sampath the plaintiff herein (1st Plaintiff in C.S.No.518/2013) in the post of the Vice President in the Board of Management of Vellore Institute of Technology and allow him to discharge his duties as Trustee of the first defendant Trust. The said suit C.S.No.518/2013 is pending on the file of this court on its original side.

3. Meanwhile, the first defendant served an order of suspension on the plaintiff as Trustee alleging violation of the code of conduct and such suspension order came to be passed on 06.07.2014. Along with the suspension order, a Charge Memo containing as many as 23 charges also came to be issued. The plaintiff was directed to show cause within a week. The Charge Memo was received by the plaintiff on 08.07.2014 and within three days thereafter. i.e. on 11.07.2014 itself, he submitted a reply seeking certain particulars regarding the date of meeting of the Board of Trustees in which the resolution to suspend him was allegedly passed holding out that to his knowledge, no meeting of the Board of Trustees was conducted for about 1-1/2 years prior to the date of his reply. He had also stated therein that he would submit his detailed response to each and every charge when the particulars sought for would be furnished to him. He also made it clear that he would also seek a personal hearing. However, without furnishing the above said details and without even giving a reply to the above said

communication sent by the plaintiff, the second defendant, as Managing Trustee of the first defendant Trust, issued the impugned order terminating the plaintiff G.V.Sampath as Trustee of the first defendant Trust. The said order of termination dated 16.07.2014 is the cause of action for the plaintiff to file the present suit O.S.No.67/2014 on the file of the trial court, namely the Court of the Principal District Judge, Vellore with the following prayers:

a) A declaration that the order dated 16.06.2014, which was passed by the 2nd defendant, on the basis of the alleged meeting of defendants 2 to 8 of the 1st defendant removing the plaintiff from the Trusteeship of Vellore Institute of Technology trust, as null and void, arbitrary, contrary to the law and violation of principles of natural justice;

b) A permanent injunction restraining the defendants 2 to 8, their men, agents and subordinates or any one claiming through them from preventing the plaintiff from discharging his functions as trustee of the 1st defendant;

c) A direction to the defendants 2 to 8, jointly and severally, to pay a compensation of Rs.10,00,000.00 as damages for the pain, mental agony and harassment caused to the plaintiff;

d) A direction for payment of cost;

AND

e) such further or other orders as the court deems fit and proper in the facts and circumstances of the case.

4. Pending suit, the plaintiff G.V.Sampath filed four interlocutory applications. They were: I.A.No.126/2014 for injunction restraining the

defendants from preventing the plaintiff from discharging his duties as Trustee of the first defendant Trust; I.A.No.127/2014 to stay the operation of the order of termination of the plaintiff as Trustee of the first defendant Trust; I.A.No.128/2014 for appointment of a Receiver; and I.A.No.129/2014 for a direction to the defendants to produce the Minute Books of the Board of Trustees from the year 1984. The applications were hotly contested by the defendants 1 and 2, who are supported by the other defendants.

5. The learned trial Judge, after hearing, by separate orders passed on the same day, namely 23.11.2015, dismissed I.A.No.126/2014 and I.A.No.128/2014. Challenging the same, C.M.A.Nos.42/2016 and 43/2016 were filed by the plaintiff and the said CMAs are pending. I.A.No.127/2014 has been dismissed and the same is challenged by the plaintiff in C.R.P.(PD) No.392/2016. So far as I.A.No.129/2014 is concerned, the learned trial Judge allowed it in part and directed production of the Minute Books from the year 2008 and the prayer regarding the production of the Minute Books prior to 2008 has been rejected. Challenging that part of the order directing production of the Minute Books from the year 2008, the defendants 1 and 2 have filed C.R.P.(PD) No.369/2016. So far as the disallowed portion of the prayer made in I.A.No.129/2014 is concerned, the plaintiff has preferred C.R.P.(PD) No.393/2016.

6. For the sake of convenience and in order to avoid confusion, the parties are referred to in accordance with their ranks in the original suit and at appropriate places, if necessity arises, their ranks in the particular CRP may also be indicated.

7. Though different counsel are on record for the defendants 1 and 2, they chose to engage Mr.T.R.Rajagopalan as the Senior Counsel in C.R.P.(PD) No.369/2016 and Mrs.Chitra Sampath, learned Senior Counsel in the other two CRPs. The plaintiff is represented by Mr.V.Raghavachari in all the three CRPs. The other respondents are represented by counsel as indicated below the cause title. The 5th and 6th respondents in C.R.P.(PD) No.369/2016 who are the respondents 6 and 7 in C.R.P.(PD) Nos.392 and 393 of 2016 have not chosen to contest.

8. The arguments advanced by Mr.T.R.Rajagopalan, learned senior counsel appearing on behalf of the counsel on record for the defendants 1 and 2 (petitioners in C.R.P.(PD) No.369/2016), by Mrs.Chitra Sampath representing the counsel on record for the defendants 1 and 2 (respondents 1 and 2 in the other two CRPs), by Mr.V.Raghavachari, learned counsel for the plaintiff, who is the petitioner in C.R.P.(PD) Nos.392/2016 and 393/2006 and first respondent in C.R.P.(PD) No.369/2016 and by the counsel for the other respondents were heard. Certified copies of the impugned orders of the trial court and copies of the other documents,

produced on either side, in the form of typed sets of papers were also perused.

9. The main contention of Mr.V.Raghavachari, learned counsel for the plaintiff is that the order of suspension and the order of termination of the plaintiff as Trustee of the first defendant Trust have been *prima facie* shown to be malafide, against the clauses of the Trust Deed, against even the amended regulations of the Trust Deed and against the basic principles of natural justice. It is his contention that no resolution could have been passed in the Trust Board without serving notice of convening of the meeting of the Trust Board on all Trustees by Registered Post; that the very foundation of the charge, namely resolution of the Board of Trustees to place the plaintiff under suspension as Trustee could not have been validly passed, since to the knowledge of the plaintiff, no Board meeting was held for about 1-1/2 years prior to the date of issuance of the order of suspension; that the same is the reason why the defendants chose to adopt a bye pass method of terminating the plaintiff as Trustee, on the alleged ground of failure to attend three consecutive meetings of the Board of Trustees; that the order of termination came to be passed without producing the particulars required by the plaintiff to submit a detailed response to various charges leveled in the Charge Memo and that the same will *prima facie* show that the defendants did shy away from conducting a fair enquiry providing a reasonable opportunity to the plaintiff of being heard .

10. It is the further contention Mr.V.Raghavachari that in C.S.No.518/2013, through their senior counsel, the defendants had made an undertaking that they would not remove the plaintiff as Trustee; that having given such an undertaking, they found an escape route in terminating him on the alleged ground of deemed vacation of the office due to the alleged failure to attend three consecutive Board meetings; that the same was done with a view to escape contempt proceedings for violation of the undertaking given in the High Court in C.S.No.518/2013 and that the lack of bona fide and motivation by mala fide will be obvious from the fact that the impugned action was sought to be taken, because the plaintiff approached the High Court with the Scheme Suit and writ petitions in W.P.Nos.15629 and 15630 of 2014 challenging the functioning of the Off-campus centre at Chennai.

11. Per contra, it is the contention of Mr.T.R.Rajagopalan, learned Senior Counsel and Mrs.Chitra Sampath, learned Senior Counsel, who argued on behalf of the counsel on record for the defendants 1 and 2, that the plaintiff being one of the sons of the Founder-Trustee was co-opted as a Trustee like his other sons; that the plaintiff who was functioning as the Vice-President of VIT Board of Management, committed many irregularities ranging from mismanagement to misappropriation and financial impropriety; that still he was allowed to complete his term as Vice President of the Board of Management of Vellore Institute of Technology; that even

then, on the expiry of his term as Vice President of the Board of Management, he was sent with an appreciation letter; that the plaintiff wanted to stick on to the post of Vice President of the Board of Management of VIT for the next term also and the same was not conceded by the defendants and that the same was the provocation for the plaintiff to file the Scheme Suit and the writ petitions, thereby tarnishing and lowering the image of the institution, which stands first in rank among Private Engineering Colleges in this part of the Globe.

12. It is their further contention that the plaintiff was indulged in causing hurdle to the admission process, attacking the functioning of the institution and disarraying prospective students and their parents by abruptly stopping the admission process, which prompted the Chancellor to intervene; that the plaintiff even misbehaved with the staff, Financial Officer, Public Relations Officer using abusive language against them in the presence of others; that he issued hate S.M.S. to the faculties and staff of the Vellore Institute of Technology; that on a particular day, the plaintiff came to the campus in a drunken stage with rowdy elements, trespassed into the office room of Vice President G.V.Selvam and tore off many documents and flushed them out in the toilet, pursuant to which a police complaint was lodged by the second defendant and that under the said circumstances, it would not be conducive for the smooth running of the institution if the plaintiff is not excluded from the administration of the

Trust and the management of the institution run by the Trust. It is their further contention that when the injunction application in C.S.No.518/2013 came up for hearing only an information was furnished to the High Court to the effect that the plaintiff had been removed from the post of Vice President of the Board of Management alone and not as Trustee; that he continued to discharge his function as a Trustee and that the said information cannot be projected as an undertaking not to remove him as Trustee.

13. As an answer to the above said contentions raised on behalf of the defendants, Mr.V.Raghavachari, learned counsel for the plaintiff, contended that the police complaint came to be lodged by the second defendant with concoction after deliberation and that it would be obvious from the fact that the said complaint was preceded by a complaint of one Mr.Karunakaran, Chief Security Officer dated 07.08.2013 in which, nothing regarding the destroyal of the documents and flushing them out in the toilet came to be made. Regarding the contention raised on behalf of the defendants that no undertaking not to remove the plaintiff as Trustee was given in the High Court in C.S.No.518/2013, learned counsel for the plaintiff would contend that there is no substance in it. It is also his contention that the plaintiff was raising objections for admitting students to the courses started without the prior approval of the University Grants Commission (UGC) and Ministry of Human Resources and Development

(MHRD) and raised a strong objection for admitting students in the off-campus of the VIT University in Chennai in the interest of the institution; that when his objection was not taken in the right sense, plaintiff had to approach the High Court with the above said writ petitions and the University Grants Commission, whose nominee is their in the Board of Management, with the intention of saving the institution from losing its status as a deemed university and that the same was the provocation for the defendants to take steps to eliminate the plaintiff from the administration of the institution and from the Board of Trustees.

14. It is his further contention of Mr.V.Raghavachari that even the irregularities committed by others in the teeth of the objection raised by the plaintiff was wrongly shown to be irregularities committed by the plaintiff even though he tried to save the institution by approaching the court, UGC and other authorities and that the same shall be apparent from the contents of the Charge Memo served on the plaintiff. In support of his contention that the defendants gave an undertaking through their senior counsel in C.S.No.518/2013 not to remove the plaintiff as trustee, the learned counsel for the plaintiff drew the attention of the court to an order of a learned single Judge of this court (Mr.Justice R.Sudhakar) dated 16.08.2013 passed in O.A.No.597/2013, A.Nos.3559, 3560/2013, O.A.No.569/2013 and A.Nos.3444 to 3446/2013 in C.S.No.518/2013. In the said order an earlier order dated 05.08.2013 has been referred to and

the relevant portion has also been extracted. The portion thus extracted reads as follows:

"Mr.K.M.Vijayan, learned senior counsel appearing for respondents 1 and 2 states that the applicants have not been removed from the post of trustees and there will be no obstruction to them for performing their duties as trustees and will have access to their office. The said statement is recorded."

15. As there were two applicants and one alone (plaintiff herein) was a Trustee, a clarification was sought and by order dated 16.08.2013, such a clarification was issued holding that the above said representation would be holding good only in respect of the first petitioner therein, namely the plaintiff in the present case, and so far as the second petitioner therein, namely Sadanandam was concerned, the said undertaking could not have any bearing, as admittedly he was not a trustee. The learned counsel by drawing the attention of the court to the order of this court dated 16.08.2013 has shown that the earlier order dated 05.08.2013 recording the statement of the senior counsel was reaffirmed in the order dated 16.08.2013. Having given such an undertaking to the effect that there would be no obstruction for the plaintiff to perform his duties as Trustee since he had not been removed from the post of Trustee, the defendants seem to have removed him as Trustee by causing the issuance of the impugned order of the second defendant dated 16.07.2014. The statement

made before the High Court in C.S.No.518/2013 was more in the nature of undertaking as projected by the learned counsel for the plaintiff, made with the aim of avoiding an order of injunction being passed against them. Still the defendants have chosen to cause the issuance of the order of suspension and the Charge Memo dated 06.07.2014 making as many as 23 charges. Since the suspension order and the Charge Memo were said to have emanated from a unanimous resolution passed in the Trust Board, without mentioning the date of the meeting of the Trust Board in which such resolution came to be passed, the plaintiff chose to issue a reply dated 11.07.2014 seeking particulars regarding the alleged meeting of the Board of Trustees, namely the date on which board meeting was convened and the fact whether notice was sent to all the trustees, including the plaintiff. He had also sought for particulars as to the mode of service of notice on the Trustees and also the contents of the resolution. The plaintiff also made it clear that he did not receive any notice for the alleged meeting of the Board of Trustees in which resolution to suspend him was allegedly passed and that, to his knowledge, no Board Meeting was convened for about 1-1/2 years prior to the date of his reply, namely 11.07.2014. The plaintiff also wanted the defendants to furnish him the provision under which such order of suspension was passed, since, according to him, the provision quoted in the Charge Memo did not find a place in the Trust Deed. Instead of complying with the demands made by the plaintiff in his reply dated 11.07.2014 and without even intimating him that he was not entitled to get

such particulars and that he should submit a reply to the charges within a reasonable time stipulated in such intimation, the defendants have chosen to adopt a shortcut method of causing the issuance of the impugned order of termination dated 16.07.2014.

16. The said order of termination has got two limbs: the first one is that the order recites that the charges leveled against the plaintiff stood established, since the plaintiff had failed to offer satisfactory explanation within the time granted in the charge memo; and the second one is to the effect that since the plaintiff had not attended the meetings of the Board of Trustees from April 2008, he stood discharged without further enquiry as per clause 12 of the Trust Deed dated 07.05.1984. Clause 12 of the Trust Deed provides that the Trustee, who absents himself for three consecutive meetings of the Board of Trustees without the leave of the Board of Trustees, shall be deemed to have vacated his office. So far as the second limb of the order is concerned, it is the contention of the plaintiff that there is no truth in such allegation of his absence from three consecutive meetings of the Board of Trustees, since to his knowledge no meeting of the Board of Trustees was convened within 1-1/2 years prior to 16.07.2014, the date on which the impugned order of termination came to be issued. The same is the reason why the plaintiff has sought a direction to the defendants to produce the Minute Books of the Trust Board meeting. Admittedly his term of office as Vice President of the Board of Management

ended on 10.06.2013. His service as Vice President were proudly appreciated, commended and acknowledged, which shall be seen from the letter of the Registrar of VIT University dated 10.06.2013 addressed to the plaintiff. The contents of the letter reads as follows:

"Since Mr.G.V.Sampath has decided to start his Medical College and Hospital, it has been decided, as per Chancellor's direction to relieve him from the post of Vice President of VIT University and also from the Board of Management, with effect from 10.06.2013.

We thank him for his services to VIT and wish the very best in all his endeavours."

The same happened on 10.06.2013. Subsequently, on 05.08.2013, it was reported to the High Court by the defendants that the plaintiff was not removed from Trusteeship and there would be no obstruction for discharging his duties as Trustee of the first defendant Trust. Hence it will be *prima facie* seen that no automatic vacation of the office of Trustee on the ground of not attending three consecutive meetings of the Board of Trustees was projected prior to the issuance of the impugned order dated 16.07.2014. The impugned order simply states that the plaintiff's non-attendance of more than three consecutive Board Meetings held since April 2008, discharged him without any further enquiry. If it was so, how was he allowed to function as a Trustee till 05.08.2013 as seen from the undertaking given in the High Court in C.S.No.518/2013? and how was he allowed to function as Vice President of the Board of Management till

10.06.2013? - have not been explained. It is not in dispute that the plaintiff was a member of the Board of Management of VIT and its Vice President only by virtue of his position as a Trustee of the first defendant Trust. The impugned order of the second defendant dated 16.07.2014 does not refer to the dates on which the Trust Board Meetings were held and the dates on which the plaintiff failed to attend the meetings incurring the alleged disqualification leading to the deemed vacation of his office as Trustee. As rightly contended by the learned counsel for the plaintiff, he has established a prima facie case that the ground of disqualification due to the failure to attend three consecutive meetings of the Board of Trustees was included with the object of escaping contempt proceedings for the violation of the undertaking given in the High Court in C.S.No.518/2013, by suspending the plaintiff and charge-sheeting him with 23 charges and by ultimately removing him as trustee holding that the charges made against him stood proved without even conducting an enquiry, providing a reasonable opportunity of being heard to the plaintiff.

17. It may be contended on behalf of the defendants that the plaintiffs suffered an order due to his inaction in not submitting an explanation to the charges within the time stipulated in the Charge Memo. It shall not be proper to deal with the merits of the case in detail in the revision petition. An amount of caution is to be exercised in considering the merits of the case in the revisions arising from interlocutory orders passed

in I.A.Nos.127/2014 and 129/2014. It shall be sufficient to render a finding as to whether the plaintiff has made out a *prima facie* case or not. The above said observations, have been made only to provide an answer to the question whether the plaintiff has made out a *prima facie* case or not?

18. The original Trust Deed dated 07.05.1984 did not contain a specific clause for the removal of the Trustee for misconduct. That is the reason why the plaintiff had also asked for the supply of a copy of the amended provision. According to the plaintiff, even as per the amended provision, the order of termination would be vitiated as it was not preceded by an enquiry. The Code of Conduct of the Trustees have been enumerated in Clause 3(1) of the Amended Trust Deed. Clause 3(1) reads as follows:

" 3(1) Code of Conduct of Trustees

a. No Trustee shall behave in such a manner that will lower or damage the image and reputation of the trust and its institutions in any manner including but not limited to improper conduct in board meetings, premises of the trust and its institutions, malicious campaigns through printed material, electronic mail, press releases, interviews, electronic or social media or websites.

b. No Trustee shall act against the objects of the trust or its institutions.

c. No Trustee shall obstruct the functioning of the trust or its institutions.

d. All the grievances, if any, of a trustee should be communicated only to the board and deliberated in the meeting conducted by the board, as purely an in-house proceeding, observing and protecting the doctrine of indoor management.

e. All the trustees shall both individually and collectively observe the dignity and decorum in connection with the administration of the trust or its institutions.

f. No trustee shall unnecessarily indulge in vexatious litigations that will cause damage to the trust or its institutions.

g. No trustee shall directly or indirectly sponsor any activity against the administration of the trust or its institutions.

h. No trustee shall get involved in any corrupt practices, undue influence, misrepresentation or cheating that will cause damage to the reputation of the trust or its institutions.

i. Any trustee violating any one of the conduct rules mentioned above in clause 3(1) (a) to (h) are liable to be removed, after notice to that effect and enquiry thereof.

j. The board of trustees or the Managing Trustee with the approval of the board shall make any action against any trustee or trustees, who violates any one of the conduct rules mentioned above in clause 3(1)(a) to (h) after getting an enquiry conducted.

Any trustee violating any one of the Conduct Rules mentioned in clause 3(1)(a) to (h) are liable to be removed after notice to that effect and an enquiry thereof."

19. Clause 3(2) provides the manner in which the trustees can be removed. The relevant portion is found in clause 3(2)(b) and (c). However, Clause 3(2)(a) to (c) are reproduced:

"a. A decision to issue notice of misconduct shall be taken by the managing trustee.

b. As under clause 3(2)(a), the managing trustee shall

issue a notice and call for explanation. Upon satisfactory explanation, the managing trustee may close the issue or if the explanation is not satisfactory the managing trustee shall conduct an enquiry and based on the majority decision of the board, the managing trustee may remove the trustee.

c. The decision of removal of a trustee shall be valid only if the majority among the trustees vote for a removal, pursuant to the enquiry conducted above."

Clause 3(2)(c) states that the decision to remove a trustee shall be valid only if the majority among the trustees vote for removal, **pursuant to the enquiry conducted above.** Clause (b) states that the managing trustee shall issue a notice and call for explanation; that upon such satisfactory explanation, the management shall close the issue and that if the explanation is found to be not satisfactory, the management committee shall conduct an enquiry. Only thereafter the matter shall be placed before the Board of Trustees for a resolution removing the trustee. It will indicate that an enquiry shall be conducted by the Managing Trustee, if the explanation offered by the alleged delinquent trustee is found to be not satisfactory.

20. The request made by the plaintiff for furnishing him with copies of certain documents cannot be said to be solely irrelevant. For the Charge Memo served on the plaintiff, he gave a reply dated 11.07.2014 seeking certain particulars and he had also expressed his desire to be given a personal hearing. The same was not responded to by a reply/rejoinder from

the defendants. On the other hand, without communicating the rejection of the request at the first instance and without even conducting an enquiry, the impugned order of termination dated 16.07.2014 came to be passed, not only holding that the charges stood proved but also holding that the plaintiff suffered automatic disqualification under clause 12 of the Trust Deed. Of course clause 12 of the Trust Deed says, if a Trustee absents himself for three consecutive meetings of Board of Trustees without prior leave of absence sanctioned by the Board, he shall be deemed to have vacated his office. It is pertinent to note that the Charge Memo came to be issued alleging only other acts of misconduct. However, the impugned order of termination dated 16.07.2014 incorporates an alleged deemed vacation of office also. Though there is a provision in clause 12 of the Trust Deed that a Trustee shall be deemed to have vacated his office if he absents himself from attending three consecutive Meetings of the Board of Trustees. There must be some procedure to find out whether the effect of automatic vacation of the office has taken place or not. Fair play and the principles of natural justice require an opportunity being given to the concerned Trustee before taking a decision as to whether he had incurred such a disqualification. In this regard in ***M.S.Madhusoodhanan and another vs. Kerala Kaumudi (P) Ltd. and others*** reported in (2004) 9 SCC 204, it has been held that when a notice for a meeting of Board of Directors of a company was claimed to have been sent by Certificate of Posting, the same was held to be not reliable by the Hon'ble Supreme Court. ***In Kamal Kumar Dutta and***

another vs. Ruby General Hospital Ltd. and others reported in **(2006) 7 SCC 613**, referring to the observations made in M.S.Madhusoodhanan's case, the Hon'ble Supreme Court again reiterated the point that the Certificate of Posting as proof of service of notice on the Directors for the meeting of the Board of Directors would not be reliable. If all these aspects are considered in proper perspective, the court has to arrive at a conclusion that the plaintiff has made out a *prima facie* case for seeking interim orders.

21. The learned counsel for the plaintiffs took the court thorough various charges found in the Charge Memo dated 06.07.2014 and other documents produced in the form of typed set of papers, to contend that even for the acts of the other trustees against which the plaintiff himself took exception by raising objection and addressing the UGC and MHRD besides approaching the High Court with the writ petitions indicated supra with the bona fide intention of averting the institution suffering lose of its status of deemed university, he was sought to be found fault with. The learned counsel referred to the contention raised on behalf of the defendants that the plaintiff, while functioning as Vice President of the Board of Management permitted the admissions of the students in VIT Chennai campus and only on his removal as Vice President of the Board of Management, he wanted to malign the institution as if students were admitted in VIT Chennai campus without prior permission of the UGC and MHRD and contended that the plaintiff as Vice President of the Board of

Management was in charge of VIT Vellore campus alone, whereas the off campus at Chennai was under the control of G.V.Selvam (5th defendant) as Vice President of the Board of Management. It is his further contention that right from the beginning, he was protesting against admission of students in Chennai campus without obtaining prior permission from UGC and MHRD and the same shall be seen from the various communications addressed by the plaintiff to various authorities including the Chairman of the UGC and even the Chief Minister Cell. By making such contentions, the learned counsel for the plaintiff may appear to have made an attempt to make this court consider the merits of the case. However, the said contention has to be considered only as an attempt to show that the plaintiff has got a *prima facie* case and fair chances of success in the suit, which is essential for seeking interim orders in the interlocutory applications filed in the main case.

22. Of course, the above said facts will make it clear that the plaintiff has made out a *prima facie* case for seeking interim relief. Though the plaintiff has made out a *prima facie* case that the order of termination was not in accordance with the procedure contemplated in the amended Trust Deed and it was also bereft of particulars regarding the dates of meeting of the Board of Trustees in which he absented himself. However, it is contended on behalf of the defendants that the various acts committed by the plaintiff in addressing letters to various authorities including the

Chairman of the UGC, in filing the writ petitions and publicizing the same in newspapers were aimed at bringing disrepute to the institution and that such a person should not be allowed to continue in the management of the institution either as trustee of Board of Trustees or a member or Vice President of the Board of Management. When the same was put to the learned counsel for the plaintiff and questioned as to how such a person, who knowingly or unknowingly made an attempt to bring disrepute to the institution by publicizing the alleged acts of mismanagement can be permitted to take part in the management was put to him, the learned counsel for the plaintiff contended that the indiscriminate admission to various courses not approved by UGC and MHRD and the admission of students at the Chennai campus without obtaining prior permission, posed a threat to the status of the deemed university, as it would, according to the best assessment of the plaintiff, might lead to the withdrawal of the deemed university status and that only with a *bona fide* intention of saving the institution from losing its deemed university status, the plaintiff had to take those steps. It shall not be appropriate to go deep into the above said aspects on merit in these Civil Revision petitions. Suffice to observe that the plaintiff has made out a prima facie and arguable case that what he did was only in the best interest of the institution and that the same was misunderstood to be acts calculated undermining the interest of the institution, leading to the passing of the impugned order of termination. The sustainability or otherwise of such contention has to be relegated to be

canvassed and decided in the main suit. It is enough to hold that there is a *prima facie* case made out by the plaintiff.

23. The next question that arises for consideration is whether having made out a *prima facie* case alone shall be enough for the plaintiff to get an interim order. Apart from proving, the existence of a *prima facie* case, the plaintiff has to prove that the balance of convenience also lies in his favour. The total exclusion of the plaintiff from participating in the management of the Trust and also in the management of the institution, will according to the plaintiff, result in irreparable damage to his reputation. It is also the contention of the plaintiff that in case of a *prima facie* illegal order, the restoration of the *status quo ante* shall be the rule and in the normal circumstances he shall be entitled to such an order. In the case on hand, the plaintiff has filed four applications in I.A.Nos.126/2014 to 129/2014. I.A.No.126/2014 is for injunction not to prevent him from functioning as Trustee. The same was on the basis that the order itself is void, *ab initio* and *non est*. As against the dismissal of the said application an appeal in C.M.A.No.42/2016 is pending. So far as the prayer for appointment of a Receiver made in I.A.No.128/2014 is concerned, the same was dismissed and the matter is now pending in C.M.A.No.43/2016. The present civil revision petitions are in respect of the orders passed in I.A.No.127/2014 seeking an order of stay of operation of the order of termination dated 16.07.2014 and the order made in I.A.No.129/2014 seeking a direction to

the defendants to produce the Minute Books of the first defendant from the inception of the trust. The learned trial Judge has chosen to issue a direction to produce the Minute Books for the disputed period alone, namely from 2008 onwards. Though the learned counsel for the plaintiff would have argued that the production of the Minute Books prior to the year 2008 will throw a light on the procedure adopted regarding the service of notice on the trustees for the meetings of the Board of Trustees, the said contention cannot be countenanced for the simple reason that the production of such Minute Books may be used for some ulterior purpose, namely to collect evidence in support of his case. Hence the learned trial Judge has not committed any error or mistake in holding that the plaintiff is not entitled to seek the production of the Minute Books of the Trust prior to 2008.

24. The plaintiff was there in the Trust till 16.07.2014. He was also there in the Board of Management of VIT till 10.06.2013 as its member and one of the Vice Presidents of the Board of Management of VIT. The dispute regarding the alleged mismanagement either on the part of the plaintiff or on the part of any of the defendants pertain to the period between 2010 and 2014. However, in the impugned order of termination dated 16.07.2014, the alleged unauthorised absence from the Board meeting was also referred to as the ground of disqualification leading to automatic vacation of the office as trustee. The plaintiff disputes convening of any Board Meeting for about

1-1/2 years prior to the date of the order of termination. In the reply dated 11.07.2014 also he had requested the details of the dates of meeting and the particulars as to the mode of service of notice on the trustees, including himself. Though absence of the plaintiff for three consecutive meetings of the Board of Trustees was not adverted to in the Charge Memo, since it finds a place in the order of termination, he has sought for a direction for the production of the Minute Books, which will throw a light on the said aspect. The absence from three consecutive Board Meetings did occur, according to the impugned order of termination, from the year 2008. But the dates on which the meetings were held from 2008 and the dates on which the plaintiff absented himself from the Board Meeting, have not been furnished. Therefore, the plaintiff is absolutely justified in seeking the production of the Minute Books of the Trust at least from 2008 onwards. Hence the challenge made by the defendants 1 and 2 regarding that part of the order passed in I.A.No.129/2014 does not seem to have substance in it. At the same time, the challenge made by the plaintiff regarding the disallowed portion of the prayer made in I.A.No.129/2014, namely disallowing the prayer for the production of the Minute Books from the inception of trust till 2008 also does not seem to have any substance in it. In fact during the course of arguments, the learned counsel for the plaintiff has fairly admitted that the plaintiff will be content with the direction for the production of the Minute Books from the year 2008 onwards.

25. In view of the above said observation, this court comes to the conclusion that there is no defect or infirmity in the order passed by the learned trial Judge issuing a direction to the defendants for the production of the Minute Books from 2008 onwards and rejecting the prayer for issuing a direction for production of Minute Books prior to 2008. The same will lead to the necessary consequence that the civil revision petition filed by the defendants, namely C.R.P.(PD) No.369/2016 and the civil revision petition filed by the plaintiff, namely C.R.P.(PD) No.393/2016 against the said order have got to be dismissed.

26. The main contest is in respect of the challenge made to the order passed in I.A.No.127/2014. The prayer made therein is that the plaintiff should be granted an order of stay of operation of the impugned order of termination dated 16.07.2014 passed by the second defendant. An attempt was made to contend that having filed a suit in C.S.No.518/2013 and failed to get an order of injunction not to remove him as trustee, the plaintiff cannot be allowed to achieve the said purpose by filing a separate application for stay of the order of termination in the suit concerned in this civil revision petition. It is the further contention made on behalf of the defendants that the plaintiff, having filed an application for injunction not to prevent him from functioning as trustee on the premise that the order of termination is *void ab initio and nonest* cannot be permitted to seek the very same relief by seeking an order of stay of the order of termination. The

answer to the said contention, as given by the learned counsel for the plaintiff, is that the prayer for interim stay of operation of an order which is nonest, is more in the nature of a mandatory injunction for restoring the *status quo ante*; that the nomenclature alone shall not deter the court from granting the relief and that therefore, the plaintiff is entitled to such a relief by moulding the relief into one of mandatory injunction if stay of operation of the order cannot be granted.

27. When a similar situation arose in ***Janab. Hafeez Mohammed vs. M/s.Ayanavaram Educational Trust and others in O.A.No.777/2011 in C.S.No.622/2011***, a learned single Judge of this court, by an order dated 15.06.2012, besides holding that the plaintiff therein who was removed as a Trustee, had established a *prima facie* case against the validity of the order of his removal, also held that a stigma was cast upon him without giving an opportunity of being heard; that the same resulted in greater prejudice to him; that he was sought to be prevented from discharging his duty as Trustee and that hence he should be allowed to do his duty as Trustee as the same was not likely to prejudice interest of the Trust, which was the paramount consideration over the right or interest of the individuals.

28. The above said observation squarely applies to the case on hand. The plaintiff herein has made out a *prima facie* case against the validity of the order of his termination as trustee of the first defendant Trust. No *prima*

facie case has been made out by the defendants that he had acted in a manner prejudicial to the interest of the Trust. The allegations made against the plaintiff are *prima facie* shown to be calculated for eliminating the plaintiff from the management of the Trust because of his endeavour to prevent certain irregularities, including admissions to courses and Off Campus centres without the prior permission of the University Grants Commission and the Ministry of Human Resources and Development. The steps taken by the plaintiff *prima facie* show the endeavour made by him to prevent the institution losing deemed university status for such violation. Hence the observation made in ***Ayanavaram Educational Trust's*** case squarely applies to the case on hand and the plaintiff shall be entitled to the interim protection in the form of interim relief pending disposal of the suit.

29. Yet another contention was made on behalf of the defendants 1 and 2 to the effect that since already an appeal had been filed in C.M.A.No.43/2016 against the order of dismissal of I.A.No.126/2014 praying for an injunction not to prevent him from functioning as trustee, the present civil revision petition C.R.P.(PD) No.392/2016 should not be allowed, as the plaintiff had sought one and the same relief in two different forms. The said contention seems to be hyper technical. As rightly contended by the learned counsel for the plaintiff, though the plaintiff would have contended that the order of termination is nonest, the prayer for

stay is nothing but a prayer for restoration of the *status quo ante* and that it does not overlap the prayer for prohibitory injunction sought for in I.A.No.126/2014. This court does not find any reason to reject the above said contention made on behalf of the plaintiff.

30. The learned trial Judge seems to have confused the issue by holding that cause of action for the previous suit filed in C.S.No.518/2013 on the original side of this court and the cause of action for the present suit, namely O.S.No.67/2014 on the file of the Principal District Judge, Vellore are one and the same. A proper consideration of the claims made in both the cases will make it clear that the previous suit, namely C.S.No.518/2013 was filed only for the purpose of framing a scheme and that only an interlocutory application was filed in that suit for injunction not to prevent him from functioning as a trustee of the first defendant trust. Of course no order of injunction was passed in the application filed in C.S.No.518/2013. But it is a fact, which cannot be disputed, that the said application has not been disposed of and the same is still pending. The previous suit C.S.No.518/2013 is one filed under Section 92 of the Code of Civil Procedure for framing of a scheme for proper management of the affairs of the trust and the present suit O.S.No.67/2014 came to be filed challenging the order of termination dated 16.07.2014 terminating the plaintiff as Trustee of the first defendant Trust. Hence the finding of the court below that the causes of action for both the suits are one and the

same cannot be sustained.

31. In fact in an application filed by the defendants 1 and 2 under Order VII Rule 11 CPC for the rejection of the plaint, the learned trial Judge himself had held that the cause of action for C.S.No.518/2013 on the file of the High Court, Madras and the cause of action for the present suit O.S.No.67/2014 filed on the file of the trial court were not one and the same and they were different. The said finding resulted in the dismissal of the application filed by the defendants 1 and 2 for the rejection of the plaint in O.S.No.67/2014. It is also not in dispute that a revision filed against the said order dismissing the application filed under Order VII Rule 11 CPC was also dismissed as withdrawn. Having rendered such a finding in the earlier application, the learned trial Judge has chosen to turn around and render a diametrically opposite finding to the effect that causes of action for both the cases are one and the same. The same is totally contrary to the earlier order of the trial court. The same has resulted in the order of the trial court dated 23.11.2015 dismissing I.A.No.127/2014. The same leads to conclusion that the trial court committed an error in exercise of its jurisdiction regarding the grant of interim relief in I.A.No.127/2014. Hence this court does have no hesitation in coming to the conclusion that the order passed by the trial court in I.A.No.127/2014 deserves to be interfered with and set aside in exercise of the power of superintendence of this court under Article 227 of the Constitution of India. Resultantly, the civil revision petition shall be allowed, the order of the trial court dated 23.11.2015 passed in

I.A.No.127/2014 in O.S.No.67/2014 refusing to stay the operation of the order of termination dated 16.07.2014 passed by the second defendant shall be set aside and the said application shall be allowed granting interim stay of operation of the order of the 2nd defendant dated 16.07.2014 terminating the plaintiff as trustee of the first defendant trust, which shall have the effect of restoring status quo ante. The nomenclature of the prayer need not deter the court from granting the relief to which the plaintiff shall be otherwise entitled. One cannot say that an order of stay of operation of the order passed by the Managing Trustee of a public trust removing a trustee cannot be sought for as an interim relief. In view of the peculiar situation prevailing in the case, the plaintiff was forced to seek such a relief of stay of the operation of the order of termination, terminating him as trustee and contend before the court below that, if not an order of stay, he could be granted a mandatory injunction restoring the *status quo ante* by moulding the relief. This court is of the view that technicality shall not come in the way of the plaintiff getting the interim relief, when he is otherwise entitled to the same.

32. For the reasons stated above, this court comes to the conclusion that the order of the trial court dismissing the application in I.A.No.127/2014 in O.S.No.67/2014 is liable to be set aside and I.A.No.127/2014 deserves to be allowed granting an order of stay of operation of the order of termination dated 16.07.2014 passed by the 2nd

defendant, which will have the effect of restoring the *status quo ante* prior to 16.07.2014, the date of passing of the impugned order of termination.

In the result, C.R.P.(PD) Nos.369 and 393 of 2016 are dismissed. C.R.P.(PD) No.392/2016 is allowed and the order of the trial court dated 23.11.2015 made in I.A.No.127/2014 in O.S.No.67/2014 is set aside. The said interlocutory application, viz. I.A.No.127/2014 is allowed and an order of stay of operation of the order of termination dated 16.07.2014 is passed by the 2nd defendant, as prayed for by the plaintiff, which shall have the effect of restoring the status quo ante prior to 16.07.2014, till the disposal of the original suit is granted in favour of the plaintiff. However, there shall be no order as to cost. Consequently, all the connected civil miscellaneous applications are closed.

11-05-2016

Index : Yes
Internet : Yes
asr/-

To
The Principal District Judge, Vellore

P.R.SHIVAKUMAR, J.

asr/-

C.R.P (PD) Nos.369, 392 and 393 of 2016
and
C.M.P.Nos.1911, 2099 and 2100 of 2016

11-05-2016