

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **26.04.2016**

CORAM
THE HONOURABLE Dr. JUSTICE. **S.VIMALA**

CRP (NPD) No.415 of 2016
and
C.M.P.No.2206 of 2016

1. Mr.Arumugam
Proprietor,
Globe Tailors,
Dharma Koil Street,
Anna Square,
Thiruvavarur – 610 001.
2. Mr.R.Mohandoss,
Proprietor,
Premi Tailors,
Madhavaram High Road,
Perambur,
Chennai – 600 024.
3. Mr.N.Sundaram,
Proprietor,
N.S.Tailors,
No.20, Sivan Koil Cross Street,
Kodambakkam,
Chennai – 600 024.
4. Mr.A.S.Anbusankar,
No.374, Trichy Main Road,
Kugai,
Salem – 636 006.
5. Mr.N.G.S.Mani,
No.443, T.H.Road,
Old Washermenpet,
Chennai – 600 021.
6. Mr.N.Velayutham,
No.53/98, Egambara Dabedar Street,
Alandur,
Chennai – 600 016.

7. Mrs.Laila Tajudeen,
No.42/37, Moofti Amirullah Street,
Near Sandha Market,
Triplicane,
Chennai.

... Petitioners / Defendants 1 to 3
and 6 to 9.

Vs.

1. The Tamil Nadu Thaiyal Kalai Thozhilalar
Munnetra Sangam (T.K.T.M.S.)
Rep. by its State General Secretary,
Mr.T.V.S.Mani,
S/o.T.P.Veerawamy and
its State Treasurer Mr.K.M.Basha,
Having office at
12/2C, Chengazhaneer Pillaiyar Koil Street,
Mylapore, Chennai – 600 004.

... 1st Respondent/Plaintiff

2. Mr.A.Azhagumani

... 2nd respondent/4th defendant

3. Mr.K.A.Narayanan

... 3rd respondent/5th defendant

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, against the Judgment and Decree dated 26.10.2015 made in O.S.No.9581 of 2010 on the file of the learned II Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.P.Sesubalan Raja

For R1 to R3 : No appearance

ORDER

Issues are framed, so that, no party to the litigation is taken by surprise/shock during trial; but here is a case, during judgment, additional issues have been framed, thus, taking/putting the parties by surprise/shock – the validity of the same is under challenge in this revision petition.

2. Defendants 1 to 3 and 6 to 9 are the revision petitioners. The plaintiff and Defendants 4 and 5 are the respondents 1 to 3.

3. The plaintiff, i.e. Tamil Nadu Thaiyal Kalai Tholilalar Sangam, Rep. by its General Secretary, B.S.Mani and Treasurer K.M.Basha, filed the suit in O.S.No.9581 of 2010, for declaration that the plaintiff's Union Office Bearers, elected by General Body Meeting held on 12.08.2010, (including Mr.T.V.S.Mani, as its General Secretary) is lawful and for mandatory injunction.

4. The suit was decreed as prayed for with costs, by the Judgment dated 26.10.2015. This judgment is under challenge in this Civil Revision Petition.

5. In the Civil Revision Petition, Court notice has been served on 26.03.2016 and private notice has been served on 23.02.2016. But, nobody entered appearance on behalf of the respondents, even though their names have been printed in the cause list.

6. The main grounds in the Civil Revision Petition are that: a) the Presiding Officer has not given any finding regarding the validity of the Election dated 12.08.2010; b) the Court has chosen to frame additional issues on the date of judgment, without hearing the parties as to the

necessity of framing the additional issues and without giving opportunity to adduce evidence and to advance further arguments on those additional issues. On both these grounds, the Judgment and Decree are sought to be set aside.

7. The main contention of the learned counsel for the revision petitioners is that under normal circumstances, appeal is the remedy, but, in this case, the Judgment passed by the trial Court suffers from the disqualification of being termed as Judgment as per Order 20, Rule 5 C.P.C. and therefore, the petitioners are invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

7.1. The main grievance of the revision petitioners is that the Court, at the time of writing judgment, has framed four additional issues, without the knowledge of the parties; in the absence of evidence; in the absence of pleadings; in the absence of court fees; in the absence of opportunities and therefore, it cannot be termed as judgment.

8. The following additional issues had been framed:

- a. Whether the term of the previous office bearers expired by the end of August 2010?
- b. Whether D1 to D9 involved in anti-union activities?
- c. Whether T.V.S.Mani swindled nearly 2 Crores of plaintiff union amount?

d. Whether auditing committee submitted report to the plaintiff on 11.07.2010?

9. It is contented by the learned counsel for the revision petitioners that the Court has framed additional issues at the time of finalizing the judgment without understanding the implication and purpose of framing issues. Therefore, it is necessary to consider the object of framing of issues.

9.1. The object of framing of issues has been highlighted in the decision of the Supreme Court, reported in Kalyan Singh Chouhan vs. C.P.Joshi and the relevant observation reads as under:

"18. This Court in [Bachhaj Nahar v. Nilima Mandal & Ors.](#), AIR 2009 SC 1103, held as under:

"The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an **opportunity of placing the relevant evidence** appropriate to the issues before the court for its consideration.

The object of issues is to identify from the pleadings the questions or **points required to be decided by the courts** so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot

focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue..... Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.

The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc."

19. In [J.K. Iron & Steel Co. Ltd, Kanpur v. The Iron and Steel Mazdoor Union, Kanpur](#), AIR 1956 SC 231, this Court observed:

"It is not open to the Tribunals to fly off at a tangent and, disregarding the pleadings, to reach any conclusions that they think are just and proper."

20. When and how issue arise is answered in Order XIV Rule 1 CPC, which reads as under:

"Issues arise when a material proposition of fact or law is affirmed by one party and denied by the other."

Therefore, it is neither desirable nor required for the court to frame an issue not arising on the pleadings. The Court should not decide a suit on a matter/point on which no issue has been framed. (Vide: [Raja Bommadevara Venkata Narasimha Naidu & Anr. v. Raja Bommadevara Bhashya Karlu Naidu & Ors.](#), (1902) 29 Ind. App. 76 (PC))"

10. For an issue to be decided, a) there ought to be pleading,
- b) there must be evidence touching the pleadings and c) with regard to

that evidence, other party be given an opportunity to cross examine. Therefore, the issue framed without hearing the parties is improper. When an issue is framed without hearing the parties and without pleadings, it should be construed only as a case of no "issues". It is only the issue that gives focus and guidance for the parties and not the pleadings in toto.

11. Material from which issues have to be framed has been enlisted in Order 14 Rule 3 C.P.C. No doubt, the trial Court has got a discretionary power to frame additional issues wherever necessary and also to delete the issue wherever the issues are superfluous. But, before doing that, the Court is expected to follow the procedure prescribed, so that, parties are put on notice regarding the burden and onus of proof and also the materials required and nature of evidence needed to prove those issues.

12. In order to appreciate as to whether there had been materials for framing additional issues, it is necessary to consider the brief facts:

(i) The Tamil Nadu Thaiyal Kalai Thozhilar Munnetra Sangam (T.K.T.M.S.) has been established for the purpose of taking care of the welfare and interest of the Tailors in the state of Tamil Nadu, whereunder, the 1st petitioner was the President of the above Sangam, Mr.T.V.S.Mani was the General Secretary of the said Sangam and the other petitioners were state office bearers of the above Sangam.

(ii) Mr.T.V.S.Mani was the General Secretary of Tamil Nadu Thaiyal Kalai Thozhilalar Munnetra Sangam from the year 1993. He is a native of Chennai. Since almost all the other office bearers were coming from other parts of the State, the day-to-day activities of the Sangam, including the money transactions, were dealt with by the said Mani. Unfortunately, the confidence shown by the members was abused by him and he was accused of misappropriation of the funds of the Sangam.

(iii) The Office bearers, who realized his misappropriation, had formed an Auditing Committee consisting of six persons on 24.01.2010 in the meeting of Administrative and Executive Committee held at Trichy. Mr.T.V.S.Mani, who participated in the said meeting, had also accepted the formation of the said Auditing Committee and put his sign in the minutes.

(iv) The Auditing Committee submitted its report to the Sangam in the meeting of the Executive Committee and General Body Meeting held at West Tambaram on 11.07.2010. In the said Report, the Committee has found out various irregularities and held Mr.Mani is responsible for all such irregularities and directed him to pay Rs.37,33,882/- (Rupees thirty seven lakh thirty three thousand eight hundred and eighty two only) to the Sangam. Mr.Mani, who had also participated in the said Meeting, sought time till 31.07.2010 to furnish reply to the report (along with the President, (the 1st petitioner) and Treasurer). In the said Meeting itself, it was decided to conduct election in the first week of February 2011.

(v) Mr.Mani, who was unable to give answers to the irregularities pointed out by the Auditing Committee and with an intention to avoid the payment of Rs.37,33,882/- (Rupees thirty seven lakh thirty three thousand eight hundred and eighty two only) swindled by him, using his ill-gotten wealth, announced a General Body Meeting at Kumbakonam on 25.08.2010.

(vi) The other office bearers including the petitioners called the General Body Meeting on 15.08.2010 at Dindigul.

(vii) Hence, Mr.Mani advanced his Meeting to 12.08.2010 from 25.08.2010 and claimed that in the said meeting, all other office bearers except himself were removed from the union by the alleged General Body meeting conducted by him.

(viii) It is alleged that no procedure as mandated by the Bye-laws was followed to conduct the alleged election as claimed by Mr.Mani. In the absence of list of eligible voters and in the absence of any valid declaration and information about the election, Mr.Mani could not have conducted any valid election. Hence, the allegation of Mr.Mani that he and his associates are successful office bearers is not true. Hence, the other office bearers, the petitioners herein, had refused to accept the validity of the election dated 12.08.2010 and they are looking after the functions of

the Sangam as usual. Having aggrieved, the respondent had filed O.S.No.9581 of 2010 before the II Assistant City Civil Court.

13. It is contended by the revision petitioners that though the respondents had sought several reliefs, they are entitled to claim the said reliefs only if they prove that the alleged election dated 12.08.2010 was conducted in accordance with the bye laws of the Sangam.

14. As per Section 19 of the bye-laws, 15 days time should be given to convene the extraordinary General Body Meeting indicating the subject matter of the Meeting. If the subject matter is not informed at the time of giving initial information, at least, it should be informed seven days prior to the meeting.

15. In Exs.B5 and B6, the subject matter is denoted as the explanation of the General Secretary to the report submitted by the Audit Committee and nowhere there is a mention regarding election of office bearers. All the office bearers of the sangam were removed on 12.08.2010. In the same meeting, election committee was formed. On the same day, office bearers were elected. One Mr.Kovanur Arumugam was elected as one of the six state Vice Presidents, but, he was one of the members of Election Committee.

16. Under Section 7 of the bye-laws, a member can be removed or

punished in the Meeting exclusively convened for that purpose. Prior notice should be given to the concerned office bearers before initiating such action. But, the meeting was convened not for the purpose of removal, but, in the garb of giving explanation to the report given by the Auditing Committee. The members were also not given any information regarding removal or election of office bearers.

17. When the case was posted for evidence of defendants, as there was no issue requiring the oral evidence of the defendants, the defendants did not give any oral evidence and necessary endorsement was also made to that effect. Moreover, documents were marked through P.W.1 and P.W.2.

18. In an issue pertaining to the submission of the Auditing Committee report, there is a finding that the Auditing Committee report is not proved and that the committee did not audit the account in a full-fledged manner. Therefore, it is clear that this kind of findings without an opportunity to adduce evidence, cannot be sustained.

19. The main grievance of the learned counsel for the revision petitioners is that there is no finding with regard to the validity of the so-called election dated 12.08.2010, which is the main issue to be decided and therefore, the judgment is liable to be set aside.

20. For these contentions, there is no answer on the side of the respondents herein.

21. Under such circumstances, when additional issues have been framed without pleadings, without hearing the parties, without evidence and without giving opportunity to lead evidence, the findings rendered based on additional issues is non est in the eye of law. The framing of additional issues on the eve of judgment, without being brought to the knowledge of the parties, are illegal. Therefore, the Judgment and Decree passed by the trial Court is liable to be set aside.

22. In the result, the Civil Revision Petition is partly allowed. The judgment and decree dated 26.10.2015 made in O.S.No.9581 of 2010 is set aside and the matter is remitted back to the trial Court. The trial Court is directed to hear the parties on the necessity of framing additional issues or to hear them on the justification of the additional issues framed and to offer an opportunity to both sides to adduce evidence, if those issues are found necessary and pronounce judgment afresh in the light of the facts and circumstances and evidence available on record. No costs. Consequently, connected miscellaneous petition is closed.

26.04.2016

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Index : Yes / No.

Internet : Yes/No.
To

1. Learned II Assistant Judge,
City Civil Court, Chennai.

S.VIMALA, J.

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