

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 24TH DAY OF NOVEMBER 2016

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

O.A.Nos.25 AND 26 OF 2016

IN

C.S.No.11 OF 2016

1.Dr.Shiva Kant Misra,
S/o. Late Ram Balak Misra,
"Sankarp" A-11, Sarvodaya Nagar,
Kanpur - 208005, Uttar Pradesh.

2. Dr.S.R.Subrammanian,
S/o.S.Rathinavel Pandian,
33/2, East Second Cross Street,
Amarawathy Nagar, Arubakkam,
Chennai - 600 106, Tamil Nadu.

3. Dr.Chitta Ranjan Das,
S/o. Late Bipin Bihari Das,
2858, Nageshwar Tangi,
Bhubaneswar - 751 002, Odisha.

4. Dr.Sadashivayya Soppimath,
S/o.Shadakshsarayya Soppimath,
Rose-S1, Akruti Gardens, Bhavani Nagar,
Hubli - 580023, Karnataka.

5. Dr.Probal Neogi,
S/o. Late Dr.Kali Shankar Neogi,
86, Tagore Town, Allahabad, Uttar Pradesh.

6. Dr.J.W.Ebenesh Bensam,
S/o. Dr.A.J.Bensam,
Bensam Hospital, Kalliancaud, Nagar Coil - 629 003,
Kanyakumar, Tamil Nadu.

7. Dr.Sanjay Jain,
S/o. Late Dr.P.C.Jain,
E-5, Doctors Colony, Eidgah Hills,
Bhopal - 462 001.

.. Applicants/Plaintiffs

-Versus-

1. Association of Surgeons of India,
Represented by its Honorary Secretary,
Having its office at No.21,
Swami Sivananda Salai,Chepauk, Chennai - 600 005.

2. Dr.Sureh Vashista,
President 2016,
Association of Surgeons of India,
No.21, Swami Sivananda Salai,
Chepauk, Chennai - 600 005.

....Respondents/Defendants

O.A.No.25 of 2016

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining the 2nd respondent / defendant either by himself or through his agents, servants and others acting under his direction or any officer of the 1st respondent/defendant from interfering with the functioning of the Governing Council elected for the period 2016-18 till their term expires as per the bye-laws of the 1st respondent/defendant and in particular restrain the conduct of the Governing Council meeting scheduled on 26.01.2016 at Chennai pending disposal of the present suit.

O.A.No.26 OF 2016

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining the 2nd respondent / defendant either by himself or through his agents, servants and others acting

under his direction or any officer of the 1st respondent/defendant from calling for a fresh poll for the post of President-2017 and election of the members of the Governing Council 2016-18 of the 1st respondent/defendant pending disposal of the present suit.

These Original Applications coming on this day before this court for hearing the court made the following order:

These applications have been filed by the Plaintiffs in the above suit, seeking interim injunction, restraining the 2nd Respondent / 2nd Defendant from interfering with the functioning of the Governing Council elected for the period 2016-18, till their term expires, as per the bye-laws of the 1st Respondent/1st Defendant and the conducting of the Governing Council meeting scheduled on 26.1.2016 at Chennai and interim injunction, restraining the 2nd Respondent/ 2nd Defendant from calling for a fresh poll for the post of President 2017 and election of the members of the Governing Council 2016-18 of the 1st Respondent/ 2nd Defendant, pending disposal of the suit, respectively.

2. The above suit has been filed to pass a judgement and decree, against the Defendants:-

- (a) granting permanent injunction, restraining the 2nd Defendant from interfering with the functioning of the Governing Council elected for the period 2016-18 till their terms

expires as per the bye-laws of the 1st Defendant.

(b) granting permanent injunction, restraining the 2nd Defendant from calling for a fresh poll for the post of President 2017 and election of the members of the Governing Council 2016-18 of the 1st Defendant

(c) granting costs of the suit.

3. The Surgeons in India are on a war path, having drawn out their "steely knives". Suits have been filed at various courts at various corners in India, seeking one relief or the other, but with respect to the same issues in controversy. All the suits relate to the election to the Governing Council and the legalities thereon.

4. These applications have been filed by the elected members of the Governing Council for the period 2016-18. As stated above, they have expressed grievance against the functioning of the 2nd Respondent, stating that he has been interfering with the peacefull functioning of the Governing Council. It has been brought to the notice of this court that several suits have been filed at various forums, directly affecting their rights and attempting to prevent the functioning of the Applicants. The Applicants have to approach each successive court, seeking to vacate various orders and finally, as on date, they are now pressing for an order of injunction against the 2nd Respondent, whom they claimed has engineered the various

suits through others.

5. The brief back ground facts are that the 1st Respondent, the Association of Surgeons, a registered body, had been founded in the year 1938 and it is claimed that there are nearly 16000 members in this country. It had been registered in the year 1940 with Registration No.20/1940. The Governing Council consists of President, President Elect, members of the Governing Council elected from various State Chapters, Immediate Past President (ex-officio member) and three Presidents of the Speciality Section of the Association (ex-officio). The Office Bearers of the Association are the President, President Elect, Honorary Secretary and Treasurer. The elections for the year 2015 was discussed in the Governing Council meeting held on 30.12.2014. The 2nd Respondent was the elected President in the earlier election in the year 2014 and consequently, as the President Elect was the Chief Election Officer in the year 2015. Coincidentally, the Governing Council election was also due in 2015 for the members to take charge for the period 2016-18. It is seen from the affidavit filed in support of the above applications and in the counter affidavit, resisting the averments made that the Applicants and the 2nd Respondent have made various allegations, imputing mala fide, lack of

bona fide and prejudicial acts against each other. Among various allegations, they have stated that the election, which was scheduled to be commenced on 1.10.2015 was temporarily suspended on 30.9.2015. The conduct of the 2nd Respondent was enquired and again, it had been stated that the suspension was because of 'undesirable actions' of the 2nd Respondent. Finally, it was decided, by a consortium of members, who had been nominated as election officers, that voting would commence at 00.00 hours on 20.10.2015 and end at 17.30 hours on 20.11.2015. Again various allegations were made interse between the parties.

6. In this connection, the following suits came to be filed at various forums, challenging the election process and subsequently, challenging the Applicants' continuance in their posts as Governing Council members:-

1. CS.No.805 of 2015 had been filed by a member of the 1st Respondent Association, seeking permanent injunction restraining the Plaintiffs from conducting the election.

As against the injunction granted restraining from holding elections, the Applicants herein had filed OSA.No.245 of 2015 and the Honourable First Bench of this Court had allowed the election process to continue and the same concluded on 20.11.2015 and results were published on 21.11.2015. The 1st Applicant was elected as the President 2017 and the Applicants 2 to 7 were declared as the members of the Governing Council 2016-18.

2. CS.No.9206 of 2015 had been filed before the

Civil Judge (Senior Division), Bhuvaneshwar.

3.CS.No.380 of 2015 had been filed before the Additional Civil Judge (Senior Division), Ganajur.

4.CS.No.70 of 2016 had been filed before the Civil Judge (Senior Division), Gurgaon.

5.CS.No. not clear of 2016 had been filed before the Civil Judge (Senior Division), Nuh.

7. It would have been a very happy scenario post declaration of results, if the Surgeons had devoted their time to their knowledge and skill, for which they are much revered and admired. However, the litigations again commenced at various forums.

8. The Applicants had to rush to the above courts to vacate the various orders of injunctions moulded in different forms. Among various orders passed, the courts mentioned above, the Civil Judge (Senior Division), Gurgaon in CS.No.70 of 2016 had dissolved the Applicants as a body and removed them as the Governing Council members and formed an adhoc committee. This order was challenged and set aside in the appeal. In and by the last order mentioned above, the Additional Civil Judge, Nuh had appointed a retired Additional District Judge to conduct the Annual General Body Meeting of the 1st Respondent Association. This order has also been modified.

9. The brief narration as mentioned above, though not dealing with specific allegations made by each party against each other, is more than sufficient to hold that concerted efforts had been taken and are being taken to prevent the Applicants from discharging their responsibilities.

10 . The grievance of the Applicants/ Plaintiffs is that the 76th Annual General Body Meeting of the 1st Respondent Association is scheduled to be held during ASICON 2016 at Mysuru and the 2nd Respondent, by engineering the above suits, is attempting to prevent the said Annual General Body Meeting from being conducted successfully, if not from being conducted at all. The reliefs are pressed on the ground that the 2nd Respondent is interfering in their right to conduct the 76th Annual General Body Meeting and consequently, these applications are urged before this court.

11 Before going in further details, this court has to express its serious concern at the dedicated efforts made in re-litigating the same issue at various courts, which not only the High Courts, but also the Honourable Supreme Court have held as abuse of process of court and law. This has been consistently held from the year 1977. In this regard, it is relevant to refer to the following

decisions of the Honourable Supreme Court, wherein strong views had been expressed on the point of abuse of process of court through re-litigations.

12. In the decision of the Honourable Supreme Court reported in **AIR 1977 SC 2421 1 (T.Arivanandam Vs. T.V.Satyapal)**, the father had contested the eviction proceedings, lost it, appealed against it, lost again, moved a revision, suffered rejection of the revision petition and after that, his son relitigated by filing a suit seeking that the eviction order has been obtained by fraud and collusion. In the said decision, the Honourable Supreme Court had stated as follows:-

"2. Here is an audacious application by a determined engineer of fake litigations asking for special leave to appeal against an order of the High Court on an interlocutory application for injunction. The sharp practice or legal legerdemain of the petitioner, who is the son of the 2nd respondent, stultifies the court process and makes a decree with judicial seals brutum fulmen. The long arm of the law must throttle such litigative caricatures if the confidence and credibility of the community in the judicature is to survive. ..."

13. In **1998 3 SCC 573 (K.K.Modi Vs. K.N.Modi)**, the Honourable Supreme Court had stated as follows:-

" 44. One of the examples cited as an abuse of the process of the court is re litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re litigate the same issue which has already been tried and decided earlier against him. The re agitation may or may not be barred

as res judicata. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding."

14. The same dictum and preposition of law had been reiterated with much advantage by this court in **2005 4 LW 206 (The Member Concern Department of Post, Government of India, Ministry of Communication Vs. Annapoorni and others)**, which is a case where the property of the Respondents in the civil revision petition had been acquired by the Postal Department for construction of a Post Office and a Postal Department Administration Block. Numerous litigations were filed by the wife and the family members of the land owner entwining the Postal Department in a number of litigations, which had been filed with the purpose of insisting reconveyance of land or getting more rent or to just keep the litigation alive. In such

circumstances also, this court affirmed that relitigation at various forums with respect to the same subject matter would amount to abuse of process of court and law.

15. Coming back to the facts of the present case, as stated above, pursuant to the orders of the Honourable First Bench of this court, the Applicants/ Plaintiffs have been declared as the elected members. The 2nd Respondent has not taken kindly to their election or to the declaration of the election results, though it was done only pursuant to the orders of the Honourable First Bench of this court. Consequently, suits have been initiated at various forums and this unfortunately has been the grievance of the Applicants and they have filed these applications seeking injunction, restraining the 2nd Respondent from interfering with the peaceful functioning of the Governing Council and also from calling for fresh elections for the post of President 2017, though the 1st Applicant herein has been declared as the President 2017. Surgeons, unfortunately, resist putting their scalpels down.

16. Both sides have filed typed set of documents, relating to the conduct of the elections and the pendency of the litigations at various forums. Prima facie these show that there is indeed a threat to the smooth

functioning of the Applicants. Litigations are filed at various courts at Gurgaon, Ganajur and Nuh and very surprisingly, the 2nd Respondent is surfacing at these courts even before the scheduled hearing dates and has consented to orders being passed, viz. in removing the Governing Council members and appointing an adhoc committee and at another court, in appointing a retired Additional District Judge to oversee the Annual General Body meeting. With respect to the balance of convenience, it is seen that the 2nd Respondent, quite apart from consenting to orders being passed by various courts to the detriment to the Applicants and to much damage to the reputation of the 1st Respondent Association, had also sent email dated 16.11.2016 with respect to the 76th Annual Conference of the 1st Respondent Association and ASICON. It is also seen that arrangements have been made for the conduct of the meeting and the Applicants apprehend that the 2nd Defendant would directly interfere with the smooth conduct of the meeting. Arrangements and invitations being rescheduled or cancelled would seriously affect the peace and harmony among the members of the Association, which has to be prevented and avoided. Taking that factor into consideration, this court holds that a prima facie case has been made out and that the balance of convenience is in

favour of the Applicants. Therefore, this court is inclined to grant the reliefs as sought for in these applications.

17. In the result, these applications are allowed and injunctions are granted in both the applications as prayed for. It is hoped that the Surgeons would bury their hatchets immediately.

sd./-C.V.K.J
24.11.2016

//Certified to be true copy//

Dated at Madras this the day of 2017
R.s/28.11.2017

COURT OFFICER(O.S.)

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