

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 19.08.2016

Date of Verdict: 29.08.2016

Coram

The Hon'ble Mr. Justice **M.M.SUNDRESH**

C.R.P.No.4765 of 2013

and M.P.No.1 of 2013

and

O.A.No.151 of 2016 in C.S.No.132 of 2016

and

O.A.Nos.190 and 191 of 2016 in C.S.No.150 of 2016

C.R.P.No.4765 of 2013

The Chennai Press Club
rep. by its Secretary,
Government Estate,
Chennai - 2.

.. Petitioner

Vs

1.R.Mohan

2.V.M.Subbiah

3.S.Manikandan

.. Respondents

(Respondents 2 and 3 impleaded
vide order dated 28.07.2016
made in M.P.Nos.1 and 2 of 2015
in C.R.P.No.4765 of 2013)

O.A.No.151 of 2016

A.Selvaraj

.. Applicant

Vs.

1.Chennai Press Club rep. by
its Secretary,
Government Estate, Omantharoor,
Chennai - 2.

2.K.Geethapriyan
3.V.Anbazhagan
4.Shivakumar
5.Bharathi Tamilan @ Perumal
6.P.Sundaravadivel
7.K.R.Naresh Kumar
8.R.Rajinikanth
9.K.Asudhulla
10.K.Kosalram
11.K.M.Thomas
12.K.Kubendran
13.Jacob

.. Respondents

O.A.Nos.190 and 191 of 2016

A.Selvaraj
(for himself and in a representative
capacity on behalf of members of
Chennai Press Club)

.. Applicant in
both the applications

Vs.

1.Chennai Press Club rep. by
its Secretary,
Government Estate, Omantharoor,
Chennai - 2.

2.K.Geethapriyan

3.V.Anbazhagan
 4.Shivakumar
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 7.K.R.Naresh Kumar
 8.R.Rajinikanth
 9.K.Asudhulla
 10.K.Kosalram
 11.K.M.Thomas
 12.K.Kubendran
 13.Jacob

.. Respondents in
both the applications

C.R.P.No.4765 of 2013: Civil Revision Petition filed against the order dated 31.10.2013 in E.P.No.3997 of 2012 in O.S.No.9964 of 2010 passed by the IX Assistant Judge, City Civil Court, Chennai.

O.A.No.151 of 2016: To grant of order of interim injunction restraining respondents 2 to 13 from in any way conducting elections to the post of President, Vice Presidents, General Secretary, Joint Secretary, Treasurer and Members of the Management Committee of the first respondent society either pursuant to the notice dated 24.02.2016 issued by the second respondent or otherwise pending disposal of the suit.

O.A.No.190 of 2016: To appoint a Commissioner comprising of a retired Judge of a High Court to take over and manage the affairs of the first defendant and to scrutinise the membership of the first defendant society by eliminating the bogus members and by considering and deciding on the applications for membership pending with the first defendant till the revival of the elected body of the first defendant pending disposal of the suit.

O.A.No.191 of 2016: To grant an order of interim injunction restraining defendants 2 to 4 and 6 to 14 from in any way dealing with or managing the affairs of the first defendant Press Club pending disposal of the suit.

C.R.P.No.4765 of 2013

For Petitioner	..	Mr.M.Radhakrishnan
For Respondents	..	Mr.K.Sakthivel for R2

O.A.Nos.151, 190 and 191 of 2016

For Applicant	..	Mr.Wilson, Sr. Counsel for Mr.Richardson Wilson in all the applications
For Respondents	..	Mr.M.Radhakrishnan for R1 to R3, R6 to R8, R10 to R12 in O.A.Nos.190 and 191 of 2016 in C.S.No.150 of 2016 for R1 to R3, R5 to R7, R9 to R11 and R13 in O.A.No.151 of 2016 in C.S.No.132 of 2016

COMMON ORDER

As the issues involved in the Civil Revision Petition and the applications filed in both the suits are intertwined qua the conduct of

election to the Chennai Press Club, they have been taken up and disposed of by way of a common order.

2.For the sake of brevity, Chennai Press Club is referred as petitioner and the applicants in all the applications are referred as such.

3.The petitioner is a Society registered under the Tamil Nadu Societies Registration Act in Registration No.403/1997. The main object of the petitioner is to help the members, who are in the profession of journalism.

4.The petitioner has got its own bye-laws. Bye-law No.11 speaks about membership. There are about seven categories of members, of which, we are concerned with the primary members, who alone are entitled to vote. Bye-law No.12 deals with admission as well as qualification of members including primary members. A member would become a deemed one on an application made in the prescribed form followed by payment of entrance fee and initial subscription. Such a membership will have to be approved necessarily by the Managing Committee. A Working Journalist has been defined under Section 2 (f)

of the Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955. Bye-law No.12 also prescribes the basic qualification of a primary member and the admission is also at the discretion of the Managing Committee. As per Bye-law No.15, as mentioned above, only the primary members shall have the voting rights at the General Body and other meetings, apart from being eligible for elective posts. The posts include the office of the President, two Vice-Presidents, one General Secretary, one Joint Secretary, one Treasurer and five Committee Members.

5.The duties of the Managing Committee are prescribed under Bye-law No.23. It is the governing body of the petitioner. The Managing Committee has its term for a period of two years. It shall also appoint an Election Officer either from its members or an outsider before 31st March in the year of election. Bye-law No.30 speaks about the election to be conducted in every alternate year. It once again reiterates the fact that the term of the Managing Committee is two years. Thus the elections are to be conducted during the aforesaid period of two years by the existing Managing Committee. The Election Officer shall display the complete voters list at the time of issuance of election Notification. As per Bye-law No.31, the Managing Committee

during its term of office, can fillup the vacancy of the officer bearers. This includes co-option of members by way of resolution. Under Bye-law No.41, every year audit of accounts will have to be passed by way of resolution.

6.The last of the election was conducted in the year 1991. The Managing Committee took over in the year 2001 after initial hiccups due to certain legal hurdles and the period ended in the year 2003. The person, who represents the petitioner as the Secretary allegedly got co-opted in the month of September, 2005 by the Managing Committee, despite the fact that the term has already been over and such a co-option can only be for the specified period of office. This issue of co-option is sought to be introduced for the first time, only during arguments before this Court and by way of reply to a query raised on the propriety of the said person to represent the petitioner in the capacity of Secretary. The audit of accounts was not passed for the past ten years as per the bye-laws and it appears to have been done cumulatively recently.

7.The suit was laid by one of the primary members of the petitioner before the IV Assistant Judge, City Civil Court, Chennai in

O.S.No.9964 of 2010, seeking a decree for mandatory injunction to conduct the election as per the Bye-laws by appointing the Commissioner or a Committee of Commissioners appointed by the Court. The written statement was filed mainly raising the plea of limitation. The suit was decreed exparte. Though the suit was decreed as prayed for, as seen from the judgment, it was indicated in the decree by way of direction to the petitioner and others to conduct the election. The judgment rendered on 07.03.2011 reads as follows:

"that the defendants do conduct election to the 1st defendant's managing committee consisting of posts of President, Vice President, General Secretary, Treasurers and Working Executive Committee Members as per Bye-laws of the 1st defendant."

8.In the decree, it has been stated as follows:

"1.that by appointing Commissioner or a Committee of Commissioners appointed by this Hon'ble Court within a prescribed period it be do conduct election to the 1st defendant's managing committee consisting of posts of President, Vice President, General Secretary, Treasurers and Working Executive Committee Members as per Bye-laws of the 1st defendant. (Amended as per order in I.A.No.10276/2012 dated 19.07.2012)

2.that the defendants do also pay plaintiff another sum of Rs.75.50 (Rupees Seventy Five and paise Fifty only) towards the costs of this suit as taxed and noted below.”

9. Therefore, an application was filed, seeking amendment of the decree in consonance with the judgment by invoking Section 152 C.P.C. Accordingly, the decree was duly amended. Thereafter, execution proceedings were laid in E.P.No.3997 of 2012. Though vakalat was filed, as in the case of the suit, no contest was once again laid. Accordingly, the execution petition filed was allowed in terms of the amended decree. It is needless to state neither during the execution proceedings nor in the written statement, the co-option of the Secretary of the petitioner has been mentioned.

10.Challenging the order passed in the execution proceedings, revision petition was filed in C.R.P.No.4765 of 2013 by the petitioner. Thereafter, two suits have been filed by the applicant. C.S.No.150 of 2016 has been filed seeking a decree for mandatory direction for appointing a Committee of a retired High Court Judge to take over the management of the petitioner by eliminating the bogus members, decide the pending applications of the members till the revival of the

elected body in accordance with the bye-laws. A consequential prayer for permanent injunction was also sought for against the named defendants, restraining them from managing the affairs of the petitioner. C.S.No.132 of 2016 has been filed to declare the election notice dated 24.02.2016 as null and void and for permanent injunction restraining the named defendants therein from conducting the election. These are all background facts governing the case.

11.The learned senior counsel appearing for the applicant and as supported by the learned senior counsel for the impleaded respondent, made the following submissions:

Admittedly, there was no election for more than a decade. Under the Bye-laws, there is no power or authority to the respondents to be in the affairs of the petitioner and seek to conduct the election. The person, who claims to be the Secretary does not have any authorisation. As per the decree granted by the Civil Court, election is mandatory. There are various bogus votes and bogus membership made without authorisation. In the absence of any Managing Committee in law, they cannot be approved contrary to the bye-laws and that too, without satisfying the qualification which is pre-requisite. Similarly, scores of applications were rejected without any basis. The decree

passed has not been challenged and thus binding on everyone. It was amended in consonance with the judgment. It was not as if the defendants in the suit in O.S.No.9964 of 2010 were not aware of the decree passed. They have been set exparte only after written statement has been filed and notices were served in execution petition. Therefore, it is the fit case where the elections will have to be conducted by the Honourable retired Judge of this Court and also to go into the verification of the members qua bye-laws at least from the date of the decree - 07.03.2011. Under those circumstances, the entire management will also to be taken over by the learned Commissioner/Election Officer till the new elected body comes into being. Contrary to the bye-laws, audit was not accounted for the past ten years and thereafter, it was abruptly done. There is huge mismanagement at the hands of the respondents. The income of the petitioner is Rs.50,000/- per day.

12.Learned counsel for the petitioner and some of the respondents submits that there was a due authorisation as per the resolution of the Managing Committee in the month of July, 2015. The decree was amended without notice unilaterally. The respondents are deemed to be the Managing Committee. While there is no difficulty in conducting the election, the same has to be conducted only by the respondents and thus, there is no necessity to do it through Court by

appointment of Commissioner in whatsoever manner. There are no applications pending as of now as all of them have been dealt with already either by accepting them or rejecting them. As the decree passed is nullity, the Civil Revision Petition has to be allowed and consequently, the applications will have to be rejected. More so, allowing them will amount to allowing the suits themselves. The suits, though filed in representative capacity, are based upon suppression of facts as the plaintiff has come into being only in the year 2014.

13. For more than a decade, no election was conducted to the petitioner. This is a clear fact. Therefore, only under those circumstances, the earlier suit was laid before the IV Assistant Judge, City Civil Court, Chennai in O.S.No.9964 of 2010. Despite the fact that vakalat has been filed on behalf of the petitioner in the Civil Revision Petition and the respondents in the applications before this Court, there was no appearance. The written statement was filed, wherein no strong objection has been raised, except a weak plea on limitation. Though the judgment speaks that the suit is decreed as prayed for, the decree was at variance. Accordingly, an application was filed under Section 152 C.P.C., which was also allowed. Thereafter, execution proceedings were laid. Even, in the proceeding, no ground has been

raised that the amendment was illegal and contrary to the judgment. The execution petition was ordered after due service of notices to all the parties as noticed by the vakalat filed on their behalf. Hence this Court does not find any procedural irregularity in the decree passed, followed by the order passed in the execution petition. The decree passed, though was known to the respondents, has not been put to challenge directly. Hence this Court is of the view that there is no illegality in the decree passed. However, considering the facts and circumstances of the case, this Court is of the view that the order passed in the execution petition requires a bit of tweaking, more so, when there is no objection for the conduct of the election by all the parties, which is only in respect of the methodology and procedure to be adopted. This Court is also of the view that such an action is required since the rights and duties are crystallized by the passing of the decree.

14. Coming to the contention raised on the propriety to represent the petitioner as a Secretary, for the first time, as stated above, it is stated by the learned counsel for the petitioner that he has been co-opted as a member in the year 2005. As discussed earlier, the tenure of the Managing Committee is only for two years. The election will

have to be conducted during the tenure of the Managing Committee. Therefore, there is no Managing Committee in the eye of law and thus there cannot be any co-option of member thereafter. Similarly, such persons holding office in the erstwhile Managing Committee either by election or by co-option cannot conduct the election in such capacity. To put it differently, the private respondents in the applications do not have better right than the other primary members. Co-option cannot be for eternity. However, this Court does not want to change the situation with reference to the management of the day-to-day affairs by taking note of the fact that it is going on in the same manner for more than a decade.

15.As discussed above, the effect of the decree in O.S.No.9964 of 2010 would be that the position as existed on that date will have to be taken for the purpose of conduct of the election. It appears that scores of persons have been inducted as the primary members by the private respondents. The same applies to the case of the applicant as well. Therefore, this Court has to fix the yardstick that is to be adopted for the verification of the members after the decree rendered in O.S.No.9964 of 2010 dated 07.03.2011. The bye-laws of the petitioner deal with the qualification and enrollment of a primary member. There

are two things required. One is the very basic requirement of a primary member as per the bye-laws and the second is approval by the Managing Committee. The first parameter cannot be dispensed with. Further, for the second one, there has to be approval. This approval is in the form of verification. Certainly, the verification done by the private respondents cannot be accepted in view of the findings rendered above that they are not part of the Managing Committee since it is not in existence over the years. In such an eventuality, it would only be just and proper to assign the said role to the learned Election Officer. There cannot be any objection for the same. The parties herein cannot be stated to be affected by this as what is proposed to be done is only a verification. It is nothing but compliance of Bye-law No.12 which mandates approval. Such members would continue to be so, till the approval is made. Therefore, this Court is of the considered view that such an exercise has to be done by the learned Election Officer.

16. Similarly, for the rejected applications also, this Court is of the view that the learned Election Officer will have to have a fresh look. It is for the reason that the respondents or the petitioner who took the decision did not and do not have the power or authority to do

so. As they do not represent the petitioner by acting as a Managing Committee, they cannot have any objection, more so, for induction of members, who would otherwise be eligible. However, such a methodology cannot be extended from the date of hearing - 19.08.2016 as this Court in clear terms told the learned counsel for the parties about the nature of order that is going to be passed, apart from indicating that no new application would be entertained. This is also for the reason that allowing a new application would create unnecessary problem as the parties are quite aware of the order to be passed. Further more, this Court is also of the view that there is practically no difference between the members, who were allowed to get enrolled after the decree and the persons whose applications have been rejected recently as the entire happening was during the interregnum without authority.

17. The submission of the learned counsel for the applicant that the entire affairs of the petitioner will have to be taken over cannot be accepted by this Court at this stage. It is the respondents who are in management though without authority for more than a decade. Therefore, at this stage, this Court does not want to change the present working pattern except to the extent indicated above for the

purpose of conducting the election. Similarly, the submission of the learned counsel for the petitioner and the respondents that the prayer sought for in the applications shall not be granted at the interlocutory stage also cannot be accepted. This order is passed not only in the applications but in the Civil Revision Petition as well. As discussed above, neither the person who seeks to represent the petitioner nor the private respondents have any role to play qua the Managing Committee, which is not in existence. After all, all the parties are desirous of conducting a fresh election.

18. Therefore, this Court is inclined to pass the following common order by taking into consideration the decree passed, the discussion made and also in exercise of power under Article 227 of the Constitution of India:

1. The judgment and decree rendered in O.S. No.9964 of 2010 (as modified) is legally valid and thus binding on all the parties.

2. Justice K.CHANDRU, (Retired Judge, High Court, Madras), having office at "Sakthi Illam", First floor,

Lalitha Mahal, 3, Justice Sundaram Road, Mylapore, Chennai 600 004 is appointed as Election Officer.

3. Considering the nature of the exercise to be done, Mr.Balan Haridas, Advocate, having his Office at J-51, Anna Nagar East, Chennai - 102, is to assist the learned Election Officer in all his functions.

4. All the members inducted after 07.03.2011 i.e. date of the decree are to be approved by the Election Officer.

5. The Election Officer is also required to take into consideration the rejected applications from 07.03.2011 onwards and take a decision for approval as per the bye-laws.

6. Only such members approved by the Election Officer shall become admitted primary members.

7. The Election Officer is required to peruse the applications for approval of membership both already approved and rejected between 07.03.2011 and 19.08.2016 and take a decision in tune with the bye-laws.

8. The Election Officer shall publish the voters list thereafter.

9. Before publishing the voters list, it is open to the Election Officer to follow any fair procedure, if so required. The Election Officer is requested to complete the entire election process within a period of three months from the date of receipt of a copy of this order.

10. The Election Officer is requested to send the communication of the decision in not approving a member who was already admitted after 07.03.2011.

11. The day-to-day management of the petitioner is allowed to be conducted by the same persons subject to the condition that they should extend all co-operation to

the learned Election Officer for the smooth conduct of the election.

19.This order is passed without prejudice to the contentions of the parties in the main suit. The petitioner is directed to pay a sum of Rs.1,00,000/- (Rupees One Lakh only) as initial remuneration for the Election Officer within a period of two weeks from the date of receipt of a copy of the order. Thereafter, a further sum of Rs.1,00,000/- shall be paid to the Election Officer, after the conclusion of the election. Similarly, a sum of Rs.50,000/- each to be paid to the learned counsel assisting the Election Officer.

20.With the above observations and directions, the Civil Revision Petition as well as the Original Applications stand disposed of. No costs. Consequently, connected M.P.No.1 of 2013 stands closed.

29.08.2016

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M.M.SUNDRESH, J.

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Pre-delivery order in
C.R.P.No.4765 of 2013
and
O.A.No.151 of 2016 in
C.S.No.132 of 2016
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