

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 10TH DAY OF FEBRUARY 2017

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

O.A.No.120 of 2017

in

C.S. No.79 of 2017

Tamil Nadu Silambattam Association
Rep. by its General Secretary-Incharge
and Joint Secretary,
Mr.K.G.Murali Krishna,
A.J-11/102, Second Street,
Shanthi Colony, Anna Nagar,
Chennai - 600 040. ..Applicant/Plaintiff

Vs

S.Kesavan
No.25, Kumarasamy Street,
Arcot, Vellore District-632 503
Tamil Nadu. ..Respondent/Defendant

O.A.No.120 of 2016

Original Application praying that this Hon'ble Court be pleased to grant ad interim injunction restraining the respondents/defendant or his agents from conducting the General Body meeting on 12.02.2017 or in any other subsequent dates and conduct any tournaments and issue certificates in the name of the association pending disposal of the above suit.

This Original Application coming on this day before this court for hearing the court made the following order:

The application has been filed by the plaintiff in the suit seeking an order of ad-interim injunction restraining the respondent/defendant or any body from conducting the General Body Meeting on 12.02.2017 or in any other subsequent dates and conducting any Tournament and issue certificate in the name of the Tamil Nadu Silambattam Association pending disposal of the above Civil Suit.

2. The respondent/defendant had entered appearance as Caveator and consequently opportunity was granted to file their counter.

3. In the affidavit filed in support of the above application, the General Secretary in-charge and Joint Secretary of the Tamil Nadu Silambattam Association has stated that the petitioner Association called that "The Tamil Nadu Silambattam Association" was formed in the year 1980 with an object of developing and popularizing the Marital Art of Silambattam as modern sport with an intention to be recognised by the State, National and International Forum. It had been stated that the Indian Silambattam Federation was also formed in the year 1995. The Tamil Nadu Silambattam Association has also been recognized by the Sports Development Authority of Tamil Nadu in the year 1981.

4. It had been stated that the President of the Association as on date is Dr.M.Rajendran, the serving IAS Officer. It had been further stated that defendant was the General Secretary of the Association and since he had acted against the interest and welfare of the Association, necessary proceedings had been initiated against him.

5. Among the allegations raised against the defendant, it had been stated that on 13.10.2015, he issued a circular to the members and to the players of Sliambattam stating that the National Game of Silambattam is scheduled to be conducted at New Delhi and invited the participants for the said contest. Further, against the principles upheld by the Association, it had been stated that the respondent/defendant collected huge sums of money from each individual players, officials and managers and later took them to New Delhi for participation in the National games. Further it is stated that the said amounts collected have been misappropriated by him.

6. The further allegation raised against the respondent/defendant was that he issued merit certificates to Silambattam players who did not deserve the same. It had been stated that he issued false certificates, false identity cards showing the players

from the Tamil Nadu as if they represented other States. It has been further stated after conclusion of the above said National games at New Delhi, when the participants came back to Chennai they quarreled with the respondent/defendant even at the Railway Station at Chennai which was widely reported in the Newspapers and also leading to filing of a Police complaint against the respondent/defendant.

7. It had been stated that since the respondent/defendant had acted against the best interest of the Tamil Nadu Silambattam Association and since complaints were also received, the President, framing a prima facie opinion, in the interest of the Association, suspended the respondent/defendant from the post of General Secretary on 18.05.2016. The deponent of the affidavit was posted as General Secretary of Tamil Nadu Silambattam Association and another person Mr.A.Sundar was appointed as General Secretary for Indian Silambattam Federation.

8. It had been further stated that the respondent/defendant approached the President and tendered apology and undertook not to act against the interests of the Association. The President, believing the words revoked the suspension and restored the respondent/defendant once again as the General Secretary

of Tamil Nadu Silambattam Association. However, the President, closely monitored the conduct of the respondent/defendant.

9. It had been further stated that the respondent/defendant issued a circular dated 02.12.2016 to all the Members of the Tamil Nadu Silambattam Association inviting participants to the State Junior Sport Meet to be conducted at Tiruppur on 07.01.2017 and 08.01.2017. However, it came to the knowledge of the President that the respondent/defendant, just two days prior to the sports meet, had contacted the District Secretaries and informed them that the sport meet was cancelled. This was with the intention to de-fame the name of the Association and the President. Consequently, many participants did not participate in the Junior Sports Meet and many junior level Silambattam players did not get the opportunity of participating in the competition thereby losing the opportunity of getting certificate which would have been very helpful for them during applications for higher education and jobs.

10. It had been further stated that since the respondent/defendant had again acted against the interests of the Association, the President, acting on the complaints from members of the Association initiated disciplinary proceedings against the respondent/defendant

and issued orders of suspension by letter dated 17.01.2017, pending detailed enquiry.

11. Again the deponent of the affidavit was appointed as General Secretary in-charge to carry out the functions of the Association. The respondent/defendant was also directed to hand over and deliver all the documents to the deponent of the affidavit. It may also be mentioned that the deponent of the affidavit was that time the Joint Secretary of the Association.

12. It had been further stated that even though the respondent/defendant received the letter of suspension on 18.01.2017, he had convened an Executive Committee Meeting on 22.01.2017 by contacting over phone some of his hand picked members. It had been stated that such invitation and conducting the Executive Committee Meeting was illegal, since he had already been suspended on 17.01.2017. Further the stipulation that a minimum of 10 days notice is required to convene Executive Committee Meeting was not adhered.

13. It had been further stated that the respondent/defendant had also sent a communication to all the Members inviting them to attend the General Body Meeting on 12.02.2017. Claiming that the respondent/defendant had no such authority as per provisions contemplated under the Tamil Nadu Silambattam

Association Bye-laws, this suit has been filed and this application has been taken out by the plaintiff seeking an order of ad-interim injunction restraining the respondent/defendant from conducting the General Body Meeting on 12.02.2017 or any subsequent dates and from conducting any tournament and issuing certificates in the name of Association.

14. The respondent/defendant as stated above had filed Caveat. He also filed his counter affidavit since opportunity was granted to him. In the counter affidavit it had been stated that the relief sought for is restraining him from conducting General Body Meeting on 12.02.2017 and also from conducting any tournament in the name of the Association. It was stated that the reliefs as framed are not sustainable in law.

15. In the counter the authority and locus of the deponent of the affidavit to institute the suit was also questioned on the ground that he had no authority on the date of presentation of the plaint to file or sign the plaint on behalf of the Tamil Nadu Silambattam Association. It had been further stated in the counter that the Executive Committee Meeting was held on 22.01.2017 and the decision to convene a General Body Meeting was proposed to be held on 12.02.2017 and since the meeting dated 22.01.2017 was not challenged, the

relief in the application cannot be granted.

16. It had been further stated that the Executive Committee Meeting dated 22.01.2017 was not convened by the respondent but by the Vice-President of the petitioner/plaintiff Association at the instance of about 18 District Secretaries. During the said meeting the 18 members resolved to conduct a General Body Meeting on 12.02.2017. Consequently, it was held out that the meeting to be held on 12.02.2017 is in order and cannot be questioned by the petitioner/plaintiff.

17. It had been further stated that the suit is bad for mis-joinder of parties since the Vice-President of the Association was not added as a party/respondent. It had been further stated that the President of the Association was not vested with the power as per Article IX of the Bye-laws, and only the Executive Committee had the power to initiate action against the members, associates and competitors etc. It had been stated that the President had no power to suspend the office bearer of the Association.

18. It had been further stated that even if it is to be taken that the respondent/defendant was suspended on 17.01.2017, the Executive Committee Meeting in the meeting on 22.01.2017 had revoked the suspension and consequently the deponent of the affidavit who filed

the application has misused the name of the Association to file the suit.

19. It had been further stated with respect to the tournament scheduled at Tiruppur on 17.01.2017 and 18.01.2017 that the Tiruppur District Silambattam Association intimated that they could not make enough arrangements and it was only because of that reason the other Associations did not participate in the said tournament.

20. The allegation that monies were collected for the participation of the tournament at New Delhi and the allegation of issuance of false certificate and misappropriation of funds were denied. It was therefor stated that the application has to be dismissed and the relief sought has to be negatived.

21. Heard arguments advanced by Mr.U.Karunakaran, learned counsel appearing for the plaintiff and Mr.R.Ganesh Kumar, learned counsel appearing for the respondent/caveator.

22. The applicant/plaintiff had also filed a typed set of papers including the Bye-laws of the Tamil Nadu Silambattam Association, documents relating to the tournament at New Delhi and certificates issued for the same, copy of the complaints given by the players and official against the respondent/defendant and its allied

documents, the suspension order dated 18.05.2016 and the revocation of suspension order dated 28.11.2016, documents relating to State Junior meet at Tiruppur issued by the respondent/defendant and the complaints relating to the same, the specific complaints received against the respondent/defendant and the suspension order dated 17.01.2017 and the communication regarding the suspension to all State officials and District Secretaries and the letter dated 22.01.2017 sent by the respondent/defendant containing allegations against the President of the Tamil Nadu Silambattam Association.

23. The respondent/defendant has also filed a typed set of papers containing the letter issued by the Tiruppur Silambattam Association and its related documents, the letter issued by the District Silambattam Association dated 22.01.2017 and the resolution passed by the Executive Committee Meeting of the Tamil Nadu Silambattam Association dated 22.01.2017.

24. I have carefully considered the material papers and also the arguments for granting ad-interim injunction and disputing the reasons stated therefor and the documents filed. Granting of interim injunction is dependent on the applicant/plaintiff making out a prima facie case and also at the same time holding out that the balance of convenience by denial of injunction would

cause more harm the petitioner, balanced with to the harm caused by granting ad-interim injunction to the respondent.

25. Silambam or Silambattam is a weapon based Indian Martial Art from Tamil Nadu. It derives from the Tamil word "Silam" meaning "hill" and the word "Perambu" from which the English word "bamboo" originates. Silambam refers to the sound derived from the swinging of the "Perambu" from the Kurinji hills of Tamilnadu. Thus silambam was named after its primary weapon, the "Perambu". Oral folklore traces silambam back several thousand years to the great siddhar, the enlightened saint, Agasthyar. The "Kampu Sutra" records advanced fighting theories in verse in texts on palm leaves. References in the "Silappadikkaram" and other works of Sangam literature show that silambam has been practiced as far back as the 2nd Century B.C. The soldiers of the kings, Puli Thevar, Veerapandiya Kattabomman and Maruthu Pandiyar relied mainly on their silambam powers in their warfare against the British Army. The martial art, which was part of Tamil culture suffered a decline after the British colonists banned silambam. The ban was lifted only after India achieved independence. Silambam practice improves flexibility, agility, hand-eye coordination, kinesthetic awareness, balance, speed, strength, muscular

endurance and cardio vascular stamina.

26. The Tamil Nadu Silambattm Association has been functioning with noble object of upholding and popularizing the important cultural, unique to the people of Tamil Nadu. It must be pointed with much pride that Tamil Nadu culture extended beyond the Sangam age and the culture has to be respected and in fact revered by all concerned. This Culture is not only an object of pride and honour for the people of Tamil Nadu but also the pride of the country as a whole. The ancient Martial Art of Silambam in Tamil Nadu is a dying Art. In order to revive the same and bring more participants into the fold and to recognize it as sport, the Tamil Nadu Silambattam Association had been formed.

27. The learned counsel for the respondent/caveator stated that the players and experts who are skilled in Silambaam come from rural background. This is all the more important why the sport should be recognized and the players should also be duly recognized. It was with much pleasure that this Court heard that the Tamil Nadu Government has recognized the Silambattam as an official sport and experts in the same are being granted admission in professional courses under the sports quota. These are very positive steps. These steps have been done only because of this sport has been

popularized and protected by the recognized association namely the Tamil Nadu Silambattam Association. For such advancement of the sport and participation on a larger scale, the Association must be united. It is very unfortunate, if responsible office bearers in the Association begin to project their personal interests ahead of the intent of the Association and the players.

28. In this case, the Tamil Nadu Silambattam Association has come to this Court seeking a restraint order from convening a meeting to be held on 12.02.2017. It is stated that the said meeting has no legal sanction and is the handy work of vested interests, according to the plaintiff, led by the respondent/defendant. This is all the more unfortunate, since the respondent/defendant was the General Secretary of the association.

29. Among the documents filed along with the application, the learned counsel for the applicant invited the Court to examine the documents filed in relation to a competition held at New Delhi and its related documents. According to him, in the 10th National Silambam Championship, Certificate was issued to one S.Sandeepkumar for having won the second place in the event for senior men 70-80 kg category and another certificate for the very same individual was also issued showing that he had won the first place in the very same

category. More shockingly an identity card of very same player S.Sandeepkumar showing that he was from the State of Kerala and an Adhaar card in the name of same S.Sandeepkumar giving his address at Tiruvallur, Tamil Nadu had also been filed. Similarly a certificate in the name of T.Krishkumar and identity card showing him as a player from Andhra Pradesh and an Election voter's identity card showing him as a resident of Tamil Nadu were also filed.

30. Pointing out these documents the learned counsel for the applicant stated that the respondent/defendant who had signed the certificates and who had taken the participants to New Delhi had acted with malafide intention and had issued false certificates and more alarmingly had prepared identity cards for the same individual as if they hailed from two different states. The learned counsel stated in his arguments that if these certificates are produced before public authorities for the purpose of obtaining seats in professional colleges and if these certificates are to be examined by the statutory authorities and scrutinizing committees and if the discrepancies are detected, the reputation of the Tamil Nadu Silambattam Association would be greatly prejudiced damaged and directly affected. Accordingly the learned counsel for the

applicant submitted that the actions of the respondent/defendant was against the interests of the Tamil Nadu Silambttam Association. The learned counsel further pointed out that a complaint was given by the players and officials dated 08.05.2016 after returning back from the competition at New Delhi. In the complaint, it had been mentioned that more than 100 players were taken to New Delhi but no such National level games were conducted. On the other hand the players were divided into groups and each group was given a state name and they were asked to compete each other. This naturally meant a hoax tournament was conducted. Document relating to collection of money for such tournament was also filed. This had led the President of the Association to suspend the respondent/defendant by letter dated 18.05.2016 which had also been enclosed as a document to the suit.

31. The further incident of the respondent/defendant acting against the interest of the association was in the State level junior competition conducted at Tiruppur, wherein the respondent/defendant is stated to have informed other District Secretaries not to participate in the tournament. This had led to many young silambam players avoiding participating in the tournament leading to denial of opportunity. This also

led to the name of the association being tarnished in the eyes of the players. The learned counsel for the caveator stated that it was the Tiruppur District Association which did not conduct the tournament properly.

32.However I hold that, the General Secretary of the State Association has to facilitate the conduct of any tournament to the appreciation of one and all and he cannot simply point his finger at the District Association and escape from criticism. This had again led to complaints being received by the President which have been enclosed as document No. 27 to the plaint dated 08.1.2017. Further complaints had been enclosed as documents No.28,29, 30 and 31 to the plaint. It is based on all those complaints that the President of the Association issued a suspension order against the respondent/defendant dated 17.01.2017.

33.The authority of the President to suspend the respondent/defendant has been challenged by the respondent. In this connection the Bye-laws of the association has been filed as document No.2 and it provides as follows :-

*ARTICLE IX - POWERS AND DUTIES OF THE
EXECUTIVE COMMITTEE :-*

*The Executive Committee shall in
addition to the powers and duties*

prescribed elsewhere,

a.....

b.....

c.....

d.....

e. Caution, warn, suspend, expel and take disciplinary action against members, associates, competitors, other persons or persons and organisers or organisers of competitions, exhibitions etc., Registered with or recognised by the association or with any affiliated member association or come under the jurisdiction of any member association member, for any violation of the constitution, rules or bye-laws or for any other reasons whatsoever which may be deemed to the sufficient after giving such person or persons an opportunity to submit in writing an explanation of a personal hearing.

However, if a prima facie case is established, the president is empowered to take immediate action in his discretion and report the same at the next Executive Committee Meeting.

Further

ARTICLE X - POWERS AND DUTIES OF OFFICE BEARERS

President:

a.....

b.....

c.....

d.....

e. *The President is responsible for taking disciplinary action against any member whose conduct is considered prejudicial to the TSA or has violated the TSA constitution and rules.*

This was pointed out by the learned counsel for the applicant who stated that the President has power to take disciplinary action including suspension against any member. The respondent disputed this fact stating that it was only mentioned as "members" and the word "Office bearers" was not mentioned and the respondent being the General Secretary and therefore an "office bearer" he cannot be proceed by the President.

34. The fallacy in the above arguments lies in the fact that every office bearer must primarily be a member of the Association. Among the members, those who are interested can chose to become executive committee members or any other office bearer, but primarily all of them have to be members of the Association. Consequently, I told that the President has every authority, in proper cases, to take disciplinary action

against any member including the office bearers of the Association in the interest of the Association. I therefore further hold that the President had the power to suspend the respondent/defendant, who was a member and because he was a member was also General Secretary.

35. The issue whether in the present case, the President had exercised his powers arbitrarily or based on sound reasoning is an issue to be gone into at the time of the trial. On the basis of the evidence. At this stage, I hold a prima facie case has been made out by the applicant that the President has the power to take disciplinary action against any member who can also be an office bearer and also a General Secretary.

36. In the same Bye-laws the duties of the Vice-President had been given as follows :-

Duties of the Vice-President :-

- a. Vice-President will act as President in the absence of the President.
- b. The Vice-President will assist the President in all his duties.

37. In this case, the President is very much functioning as President of the Association. The Vice-President who is convened the meeting dated 22.01.2017,

had no such authority to convene the said meeting and I hold that it is evident that the Vice-President acted under the instructions of the respondent/defendant. This is strengthened by the fact that the respondent/defendant was suspended by order dated 17.01.2017 and the respondent had produced the resolution passed by the executive committee dated 22.01.2017 in which the said suspension is referred and it was revoked. Between 17.07.2017 to 22.01.2017 there are only five days. Further in the Bye-laws with respect of calling for meeting of the executive committee, it had been specifically provided that 15 days notice has to be given. However, it had been also given that it is only General Secretary who alone has the power to call for the executive committee meeting. In this case the Vice-President had convened the executive committee meeting and had conducted the same without any authority and with malafide intention. It is pursuant to such executive committee meeting dated 22.01.2017 which was held without any authority that the General Body is scheduled to be held on 12.02.2017. When the meeting dated 22.01.2017 itself had no sanctity under the Bye-laws, it naturally implies that the scheduled General Body Meeting dated 12.02.2017 is also without any authority and has been called by individuals who have no authority to call for

the meeting and discuss the issues raised. It is to be further pointed out that learned counsel for the respondent had stated that the respondent did not call for the meeting dated 12.02.2017 and it was only the Vice-President who has called for the meeting. This argument is to be rejected since, the agenda in the meeting is to take action against the President for having suspended the respondent. It is the respondent alone who is interested that the meeting should proceed. I hold that the President has the power to suspend the respondent/defendant and the Vice-President has no authority to call for the meeting.

38. The above discussion naturally leads to the conclusion that the applicant/plaintiff has made out a prima facie case for grant of interim injunction. The balance of convenience is on the side of the plaintiff. No harmful loss would be done if the meeting, convened without authority and against the principles of the Bye-law is enjoined by order of this Court.

39. Consequently, I hold that the applicant/plaintiff is entitled for an ad-interim injunction restraining the respondent/defendant or any body acted under him or his agents from conducting

General Body Meeting on 12.02.2017 or on any other subsequent date. This injunction specifically applies to the Vice-President, as he comes under the category of a person acting under the respondent having been suspended from the Tamil Nadu Silambattam Association is also prohibited by an order of interim injunction from conducting any tournament or issuing certificates in the name of Tamil Nadu Silambattam Association or in any other name pending disposal of the suit. This injunction is essential to protect the integrity and unity of the Association.

40. The learned counsel for the respondent stated that much preparation has been made for conducting the meeting on 12.02.2017. These preparations have been made by persons who had no authority and consequently, this cannot be a ground to seek indulgence from this Court. I reject this contention also.

41. On considering all the facts and circumstances of the case, I hold that the applicant/plaintiff is entitled for grant of interim injunction restraining the respondent/defendant or his agents including the Vice-President from conducting the General Body meeting on 12.02.2017 or on any other subsequent dates and also from

conducting any tournament and issuing certificates in the name of the TamilNadu Silambattam Association pending disposal of the above civil suit.

sd/.C.V.K.J

10.02.2017

//Certified to be a true copy//

Dated this the day of 2017

R.s/08.03.2017

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