

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2017

CORAM:

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER
AND
THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

Original Side Appeal No.91 of 2017 and
C.M.P.No.6270 of 2017

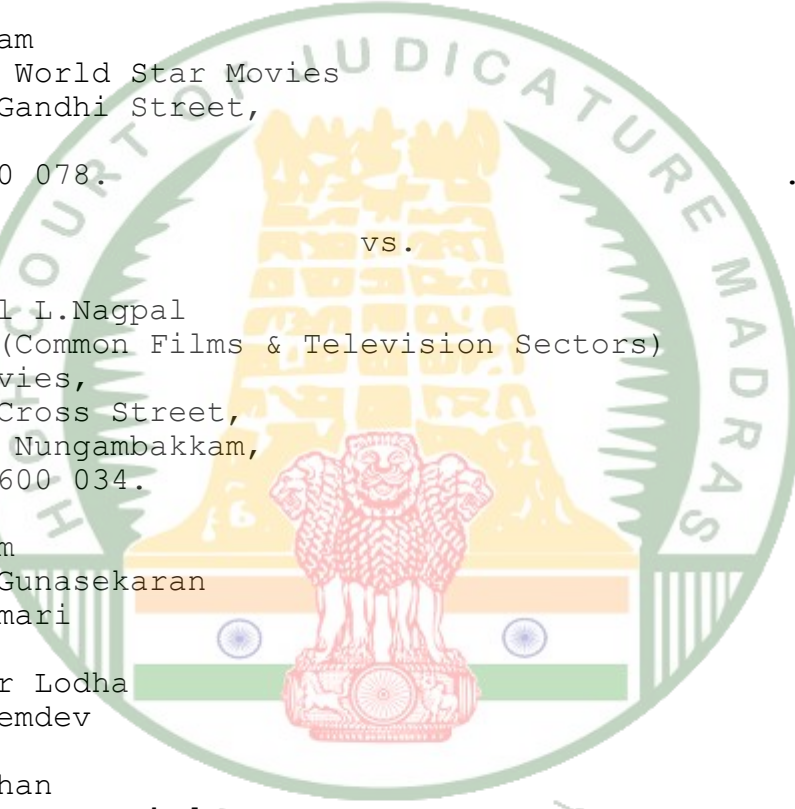
Jaguar Thangam
Proprietor : World Star Movies
No.59, Anna Gandhi Street,
M.G.R.Nagar,
Chennai - 600 078.

...Appellant

vs.

1.Giridharlal L.Nagpal
President (Common Films & Television Sectors)
M/s.L.S.Movies,
15/7, 6th Cross Street,
Lake Area, Nungambakkam,
Chennai - 600 034.

2.A.M.Rathnam
3.S.Devaraj Gunasekaran
4.P.Vijayakumari
5.R.Bhuvana
6.Ashok Kumar Lodha
7.GhanshyamHemdev
8.S.Kumaran
9.G.Madhu Mohan
10.P.A.C.V.Ranganayakalu
11.K.SathyaNarayana
12.MB.Mohamed Hidayathullah
13.Simmam Raghu
14.Aranthanki Sankar
15.K.Balu
16.N.Pakkrisamy
17.Sivaji Ramadass
18.Thenmozhi Abhavanan



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19.Film & Television Producers' Guild of South India
Rep. by its Honorary Secretaries
B1, Rams Flat, New No.19 (Old No.5)
Jagatheeswaran Street,
(Opp. to Hotel Matsaya on Thanikachalam Road)
T.Nagar, Chennai - 600 017.

20.Ka.Kalaikottuthayam

21.T.Aadhiram

22.K.Nandagopalchetty

23.S.Hemanth Kumar

24.N.Siraj Mohammed

...Respondents

Original Side Appeal filed under Clause 15 of Letters Patent and Order 36 Rule 11 of the Original Side Rules, to set aside the order and decretal order dated 13.02.2017 made in Application No.6863 of 2016 in O.A.No.448 of 2015 and Application No.2942 of 2015 in C.S.No.338 of 2015 on the file of the Original Side of High Court, Madras.

* * *

For Appellant : Mr.R.Thiagarajan

For Respondents: Mr.Thiageswaran
for M/s.Waraon and Sai Rams

J U D G M E N T

[Judgment of the Court was made by RAJIV SHAKDHER, J.]

1. This is an appeal preferred against the judgment and order dated 13.02.2017, passed by the learned single Judge in A.No.6863 of 2016 in O.A.No.448 of 2015 and A.No.2942 of 2015 preferred in C.S.No.338 of 2015.

2. The appellant is aggrieved essentially by the direction contained in Paragraph 5 of the impugned judgment and order.

2.1 For the sake of convenience, the observations made in the said paragraph are extracted hereinafter:

"5. Taking into consideration the above facts, this Court, while passing orders on 09.11.2016, has held that the Election Commissioner shall take over the entire administration into his hands for the purpose of conducting election in a smooth and proper manner. So, I am not able to appreciate the contention put-forth by the learned counsel for

the applicant that as per the by-law of the association, the existing committee shall continue till their successors are elected."

3. Mr.R.Thiagarajan, learned counsel, who appears for the appellant says that the appellant is aggrieved by the observations made in Paragraph 5 of the impugned judgment and order to the extent it empowers the Election Commissioner appointed by this Court to run the administration of Film and Television Producers' Guild of South India (in short, F.T.P.G.).

3.1. It is contended that this direction is not only contrary to the order dated 10.02.2016 passed by the Court at an earlier point of time, but also contrary to Clause 11 of the Constitution governing F.T.P.G..

3.2. The argument is that as per Clause 11 of the Constitution, it is only the elected committee of F.T.P.G., which can run the administration.

4. On the other hand, Mr.Thiageswaran, who appears for the respondents, says that in the suit filed in this Court, which is still pending adjudication, one of the prayers made was for appointment of Administrator/Receiver to manage and administer F.T.P.G. and to declare and conduct elections of the Office Bearers and Executive Committee members. In other words, the submission is that the order passed is in line with reliefs claimed in the suit.

4.1. The learned counsel submits that since there were disputes with regard to electoral rolls, this Court had appointed, one, Mr.L.Chandrakumar, Advocate, as the Election Commissioner. Since, the said Election Commissioner expressed his inability to continue with the task assigned to him, Hon'ble Mr.Justice K.P.Sivasubramaniam, a former Judge of this Court, was appointed as the Election Commissioner.

4.2. The learned counsel further submitted that even Hon'ble Mr.Justice K.P.Sivasubramaniam, was unable to function, and therefore, he made a request that he be relieved of his obligation, an eventuality, which ultimately, led to the appointment of Hon'ble Mr.Justice K.N.Basha, a former Judge of this Court, as the Election Commissioner.

4.3. The learned counsel contended that before Hon'ble Mr.Justice K.P.Sivasubramaniam was relieved of his obligation as cast upon him by the Court, he had submitted a report dated 05.08.2016.

4.4. It is submitted that a perusal of the report would reveal that finalisation of the electoral rolls cannot take place till such time the Election Commissioner is given the power to administer F.T.P.G. for the purposes of smooth conduct of elections. In other words, learned counsel submits that no interference was called for with the impugned judgment and order.

5. We have heard the learned counsel for the parties and perused the records.

6. The record shows that, as contended by the learned counsel for the respondents, Mr.L.Chandrakumar, Advocate, was, indeed, appointed as the Election Commissioner, in the first instance, to conduct elections qua office bearers of F.T.P.G. Thereafter, Mr.L.Chandrakumar was replaced by Hon'ble Mr.Justice K.P.Sivasubramaniam, a former Judge of this Court. The order to that effect was passed by this Court on 07.10.2015.

7. The learned single Judge, while issuing various directions for conduct of elections, inter alia, injuncted the plaintiff, defendants and other members of the F.T.P.G., from interfering with the election process.

7.1. It appears that the fond hope held by the Court that elections would thereon be conducted smoothly was belied. Hon'ble Mr.Justice K.P.Sivasubramaniam, asked this Court to relieve him of his obligation. However, before doing so he filed a report dated 05.08.2016 with this Court, which gave peek into what prevented the conduct of elections.

8. Going further, having regard to the request made by Hon'ble Mr.Justice K.P.Sivasubramaniam that he be relieved of his obligation, the learned single Judge appointed Hon'ble Mr.Justice K.N.Basha, a former Judge of this Court, in his place as the Election Commissioner.

9. Accordingly, Hon'ble Mr.Justice K.N.Basha was charged with the responsibility of conducting the elections. This direction was passed by the Court vide order dated 09.11.2016.

9.1. Among several directions which were issued, one of the directions, which, evidently, has caused consternation to the appellant is the direction contained in Paragraph 2 of the order dated 09.11.2016.

9.2. For the sake of convenience, the same is extracted hereafter:

"2. That the Election Commissioner appointed herein shall take the entire administration into his hands for the purpose of conducting election in a smooth and proper way."

(emphasis is ours)

10. It appears that, thereafter, the matter was mentioned and the Court in the proceeding held on 22.11.2016, inter alia, observed that since, an objection has been raised with regard to the handing over of administration to the Election Commissioner, it would be appropriate that a formal application is moved, in that behalf, for modification.

11. It is in this background that the appellant filed application, A.No.6863 of 2016; which led to the Court to pass the impugned judgment and order dated 13.02.2017.

12. As indicated above, the appointment of Hon'ble Mr.Justice K.N.Basha, a former Judge of this Court, came about, because, Hon'ble Mr.Justice K.P.Sivasubramaniam expressed his inability to continue as the Election Commissioner. The events, which propelled Hon'ble Mr.Justice K.P.Sivasubramaniam to make a request that he be relieved of his obligation are set out, in great detail, in his report dated 05.08.2016.

12.1. For the sake of convenience, we may only extract certain portions of the said report:

"11. I am therefore of the considered view that the attitude adopted by the contesting Respondents is not conducive to disclose/arrive at a proper electoral roll. It is not for me to say whether the said attitude was due to any deliberate or obstructive motives, but surely not helpful or conducive to hold the election. Any attempt to proceed with the election in the face of several unexplained deletions and inclusions, would be only a futile and expensive exercise and would result in the election being positively questioned.

12. XXXXX

13. I have thus mentioned above the issues which has thus made it impossible to assess and declare a proper electoral roll. Only thereafter, the question of calling for the objections as directed by the Hon'ble Court would arise after publishing the electoral roll. The confusion and the resultant situation is undoubtedly due to the manner in which the office of the 1st respondent has been functioning going to the extent of submitting self contradictory

lists at several stages of the hearing and not providing any proper explanation for the deletions and inclusions. This was probably the situation which was faced by Mr.L.Chandrakumar, Advocate who was earlier assigned with the responsibility of holding the election and later on his withdrawal, I was appointed. The added circumstance is also the fact of the 1st respondent having gone before the police with a complaint against his staff alleging manipulation of the records and voters list and the fact that such a complaint is pending before the Police. In fact in order to find an amicable solution whereby the election could be conducted on the basis of an agreed electoral roll, I went to the extent of suggesting to both parties either to submit an agreed electoral roll or even an agreed list of office bearers/members of the Committee and thereby even avoid an Election. Both parties have not been able to find a solution in the said context.

14. The applicants suggested that I have to eventually suggest to the Hon'ble High Court that there is no proper administration of the 1st respondent and hence be taken over by an Administrator or by the Registrar under the Tamil Nadu Societies Registration Act 1975 in view of the prevailing situation. I have informed them that it will be beyond the assignment given to me and that it was a matter for the parties to put forth their contentions before the Hon'ble Court."

13. A perusal of the said report and more particularly, the portions set out above would show that fair and free elections cannot be held till the administration of F.T.P.G. is handed over to the Election Commissioner viz., the Hon'ble Mr.Justice K.N.Basha, for the purpose of conduct of the elections.

14. Mr.R.Thiagarajan's submission that the direction contained in Paragraph 2 of the order dated 09.11.2016, was beyond the scope of the earlier order dated 10.02.2016, passed by the Court, has to be appreciated, in the light of the report dated 05.08.2016. Clearly, the learned Judge was persuaded to enlarge the scope of the earlier order, having regard to the contents of the report dated 05.08.2016. The order dated 10.02.2016, being an interim order, it could always be varied.

15. Mr.Thiagarajan's, other argument that the direction contained in Paragraph 2 of the order, dated 09.11.2016, is contrary to Clause 11 of the Constitution of F.T.P.G., according

to us, is misconceived. The reason for the same is as follows:-

15.1. The direction contained in Paragraph 2 of the order dated 09.11.2016, vests the power of administration in the Election Commissioner only for the purposes of smooth and proper conduct of elections. Clearly, what is implied in the direction is that the Election Commissioner will administer F.T.P.G. for the purpose indicated in Paragraph 2 of the order dated 09.11.2016.

15.2. The order dated 09.11.2016 did not, as is apprehended by the appellant, hand over the administration of F.T.P.G. to the Election Commissioner, generally. The direction issued by the Court is limited in time and scope. Therefore, to us, it is quite clear that the Election Commissioner appointed by this Court will have all powers of administration, which would include all ancillary and incidental powers that are necessary for conducting free and fair elections. We may also note that admittedly, the suit was filed for conducting elections for the period 2015-17. The Committee, presently in position, due to the pendency of this appeal, has continued to hold the office beyond the term prescribed in the constitution. This position is not disputed by Mr.R.Thiagarajan. It is, therefore, all the more necessary that the elections are held at the earliest in consonance with the directions issued by this Court vide order dated 10.02.2016 read with order dated 09.11.2016.

16. For the reasons given above, we find no merit in the appeal and the appeal is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

17. Needless to say that parties will cooperate and assist the Election Commissioner, i.e., Hon'ble Mr.Justice K.N.Basha, in having the elections conducted expeditiously.

18. A report in that behalf shall be filed by the Election Commissioner with this Court on or before 03.11.2017.

19. List the matter for compliance on 06.11.2017.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

svki/gg

To

1.The Hon'ble Mr.Justice K.N.Basha Judge (Retd)
High Court Madras
The Election Commission
No.Flat No.F-1 star No.25/1, Dr.Ambedkar Road,
(Old ICF Link Road)
North Thirumalai Nagar,
Villivakka, Chennai-49

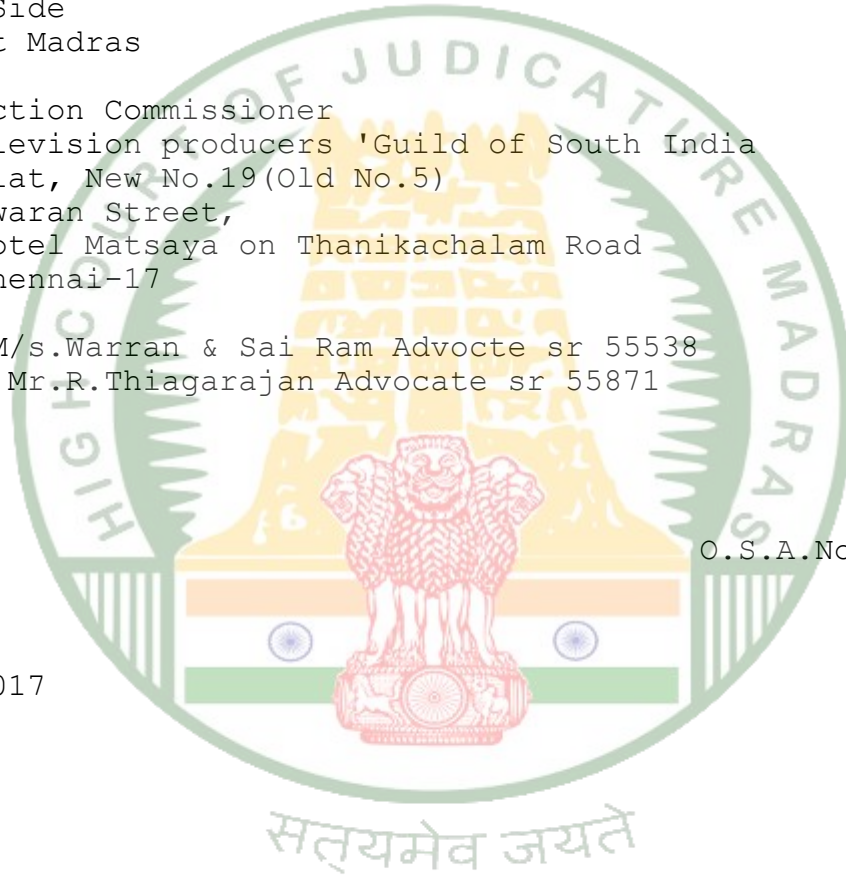
2.The Sub Asssitant Registrar
Original Side
High Court Madras

3.The Election Commissioner
Film & Television producers 'Guild of South India
B1 Rams Flat, New No.19 (Old No.5)
Jagatheeswaran Street,
(Opp to Hotel Matsaya on Thanikachalam Road
T.Nagar Chennai-17

+1 cc to M/s.Warran & Sai Ram Advocte sr 55538
+2 ccs to Mr.R.Thiagarajan Advocate sr 55871

O.S.A.No.91 of 2017

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