

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 26TH DAY OF SEPTEMBER 2017

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

A.No.6006 of 2017
IN
O.A.No.940 of 2017

In the matter of Arbitration
clause in Clause 66 under
State/Constitution of Tamil
Nadu Football Association
adopted on 23.02.2014
by the petitioner's
Association & The Respondent
Association

O.A.NO.940 OF 2017:

Madras Sporting Youngsters,
Rep. By its Hon. Secretary
42, Loco Scheme,
II Street, 1st Floor, Jawahar Nagar,
Chennai-600 082

....Applicant

Vs

Tamilnadu Football Association
Rep. By its President
73, J.N.Stadium,
Chennai-600 003.

...Respondent

A.NO.6006 OF 2017:

The President,
Rep by Mr.Jesiah Villavarayar,
Tamilnadu Football Association
73, J.N.Stadium,
Chennai-600 003.

...Applicant/Respondent

-Vs-

Madras Sporting Youngsters,
Rep. By its Hon. Secretary
42, Loco Scheme,
II Street, 1st Floor, Jawahar Nagar,
Chennai-600 082

...Respondent/Applicant

This Application praying that this Hon'ble Court be pleased to vacate the order of Interim Injunction dated 21.09.2017 passed by this Hon'ble Court in O.A.No.940 of 2017.

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

This application has been filed seeking to vacate the order of interim injunction granted by this Court in OA.No.940 of 2017 on 21.09.2017. In and by the said order, this Court has restrained the Tamil Nadu Foot Ball Association from going ahead with its Annual Ordinary Congress on 27.09.2017, in view of the breach of the requirements contained in Article 28.2 of the Bye-laws of the said Association.

2. Article 28.2 reads as follows :

*"28.2. The ordinary congress shall be held every year. The Executive Board shall fix the place and date. Members shall be notified in writing at least thirty days in advance. The formal convocation shall be made in writing at least 15 days before the date of the ordinary Congress. **This convocation shall contain the agenda, the President's report, the financial statements and the auditor's report.**"*

(Emphasis supplied)

3. From the said Article particularly the highlighted portion, it is seen that the convocation that is sent to the members shall contain the agenda, the President's report, the financial statement and the auditor's report. The convocation that was required to be sent under Article 28.2 was dispatched to the members on 13.09.2017. The applicant in OA.No.940 of 2017 would further plead that the said notice was dispatched only on 15.09.2017.

4. The said convocation was not accompanied by the financial statements and the auditor's report. This was the specific ground that was raised in the application in OA.No.940 of 2017. This Court had also granted an order of interim injunction only on that ground.

5. Mr.T.Muruga Manickam, learned Senior Counsel appearing for the President, Tamil Nadu Foot Ball Association, applicant in A.No.6006 of 2017 would submit that the applicant in OA.No.940 of 2017 Viz., Mr.T.P.Thangaraj was involved in the preparation of the accounts and the delay was caused because of his conduct.

6. By the communication dated 18.09.2017, the respondent in OA.No.940 of 2017 had informed the Honorary Secretaries of the District Foot Ball Association and Conveners of the Adhoc Committees that the statement of accounts have not been completed by the Treasurer and the audited accounts have not been made available to the Tamil Nadu Foot Ball Association till date. Hence, the same was

not attached with the Annual Report that was dispatched to the members on 13.09.2017. It is also stated that the statement of Accounts would be circulated to all the General Body Members during/ before the Congress Scheduled to be held on 27.09.2017.

7. It is submitted by Mr.T.Muruga Manickam that the audited accounts had been sent to the Office Bearers, the Executive Board Members of the Tamil Nadu Foot Ball Association, the Honorary Secretaries of the District Foot Ball Association and Conveners of the Adhoc Committees etc., on 22.09.2017. He would rely as the typed-set of papers filed by the applicant in Appn.No.6006 of 2017 to show such despatch.

8. The reason given by the applicant in A.No.6006 of 2017 for not sending the financial statements along with the Auditor's report, when the convocation was sent to the members on 13.09.2017 is the non-availability of the completed accounts and the Auditor's report. This statement is falsified by the Auditor's report produced by the applicant in O.A.No.6006 of 2017 at page 71 of the typed papers produced by it. The Auditor's report is dated as 30.06.2017. Therefore, it is clear that the finance statement and the Auditor's report were available with the applicant in A.No.6006 of 2017 even on 30.06.2017. To a specific query posed by this Court on the date it is sought to be stated that is typographical error, such an explanation is very weak and does not merit acceptance.

9. Thus it is clear that there is a non-compliance of the requirements under *Article 28.2* of the Bye-laws of the Association. I find that the applicant in O.A.No.940 of 2017 has made out a prima facie case for grant of injunction restraining the respondent viz., Tamil Nadu Foot Ball Association from going ahead with the ordinary congress on 27.09.2017.

10. The applicant in Appn.No.6006 of 2017 has raised two other legal contentions. The first is that the applicant in OA.No.940 of 2017 has not complied with the mandatory requirements of Order 39 Rule 3 (Proviso) regarding service of notice. OA.No.940 of 2017 having been filed under Section 9 of the Arbitration and Conciliation Act, 1996, the provisions of Order 39 Rule 3 will not apply. Hence, the said contention deserves rejection. The second contention is that the applicant had filed a caveat on 31.07.2017 and the same has been suppressed. The caveat has been lodged in expectation of a civil suit and not in a expected application under Section 9. Though the applicant in OA.No.940 of 2017 could have done well to serve notice on the counsel for the Caveator, non service cannot be termed as suppression of the Caveat. Even otherwise the caveator has been heard by me today.

11. Therefore, I do not find any ground to vacate the interim order already granted. The interim order is

made absolute and the same will be in force till such time, the Arbitrator enters upon a reference. On such reference being made the applicant in OA.No.940 of 2017 will be entitled to move the Arbitrator seeking suitable directions.

12. OA.No.940 of 2017 is allowed and application in A.No.6006 of 2017 is dismissed. No costs.

Sd/R.S.M.J

26.09.2017

//Certified to be a true copy//

Dated this the th day of 2017.

EM/28.09.2017

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.