

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA PRADESH**

CIVIL REVISION PETITION No.4839 of 2016

Between:

The Zonal Secretary, Secunderabad and another

.....Petitioners

and

K. Mallikarjuna Rao and 52 others

.....Respondents

Date of Judgment pronounced on : 20-01-2017

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

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! Counsel for the petitioners : Sri Vijaysen Reddy

^ Counsel for the respondents : Sri Vijay

? Cases referred

1. 2015 (5) ALD 1
2. 2001 (5) ALD 705 (FB)
3. 2003 (3) ALD 153
4. 2002 (6) ALT 268
5. AIR 2004 AP 310
6. (2011) 13 SCC 774
7. 2001 (8) SCC 509
8. AIR 1989 SC 193
9. AIR 2010 SC 3221
10. 2001 (1) ALD (1) SC
11. Laws(Dlh)-2013-12-9
12. AIR 1952 SC 64
13. AIR 1978 SC 851
14. 2000 (8) SCC 216
15. (2004) 4 SCC 697
16. (2010) 8 SCC 329
17. (2015) 5 SCC 423 (LB)

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**CIVIL REVISION PETITION No.4839 of 2016****ORDER:**

The respondent Nos.1 and 2 in S.O.P.No.365 of 2016 on the file of I Additional Chief Judge, City Civil Court, Hyderabad, impugning the docket order dated 22.09.2016 in I.A.No.1638 of 2016, maintained the revision.

2. The original petition is filed by the two petitioners by name K.Mallikarjuna Rao and S.Devender against as many as 53 respondents under Section 23 of Andhra Pradesh Societies Registration Act, 2001 (for short 'the Act'), for the reliefs of declaration and perpetual injunction viz.,

- a) Declaring the electorate, nominated by respondent Nos.1 & 2, during the period 2013-16 i.e., respondents 4 to 53 as incompetent electorate, having nominated by the respondents 1 & 2 by fraudulent means, for the elections for the tenure 2016-19 to be held at South Central Railway Zone, for the Zonal Executive Committee of All India S.C. & S.T. Railway Employees Association, Secunderabad Zone, SCR, Secunderabad, as per the notification dated 16.09.2016.
- b) Declaring the Election Notification dated 16.09.2016 vide reference No.A1/SCT/REA/ZEC-09/2016 issued by the respondents 1 & 2 to elect the Zonal Executive Committee of SCR Zone, Secunderabad, for the tenure 2016-19 by the respondents 4 to 53, as illegal, improper, irregular,

arbitrary, null and void non-est in the eye of law and contrary to the Amended Bye-laws of the All India SC/ST Railway Employees Association as amended by the Central Executive Committee on 27.02.2004 and duly circulated by letter dated 30.08.2005 of Railway Board, New Delhi.

- c) For the grant of a perpetual injunction restraining the respondents 1 & 2 from proceeding with the election process under the Notification dated 16.09.2016 vide No.AI/SCT/REA/ZEC-09/2016, for the elections for the tenure 2016-19 to be held at South Central Railway Zone, for the Zonal Executive Committee of All India S.C. and S.T. Railway Employees Association, Secunderabad Zone, SCR, Secunderabad.
- d) To award costs of the petition, and incidental expenses in favour of the petitioners and against the respondents, and
- e) To pass such other and further relief/s as this Hon'ble Court deems fit and proper in the circumstances of the case and in the interest of justice.

3. The petition averments show that it is the claim of the petitioners that All India (Nation wide) Scheduled Castes and Scheduled Tribes Railway Employees Association (for short 'the Association') for the welfare of SC/ST railway employees is registered under the Act, 1860 (old Act) with registration No.S/1517, which was recognized by Railway Board vide

proceedings dated 27.07.1974, which has to act as per the bye laws amended on 27.02.2004 and as per the communications of the railway board by letter dated 30.08.2005, that the functional system of the organization is in 4 tier viz., the Central Executive Committee at Central Level, Zonal Executive Committee at Zonal Level, Divisional Executive Committee at Divisional Level and Branch Executive Committee at Branch Level within the Divisional level railways and the committees being elected through delegate system for Central, Zonal and internal levels and by direct election by its members at Branch level and the tenure of the governing body respectively is for 3 years from the date of election and on circulation of office bearers list by the administration in order to extend the facilities as mentioned in Paras 12 to 14 of Part II of the bye laws. The election notification shall be given 21 days before the date of election to all members besides endorsing a copy of the notification date to the railway authorities to know process of the election and to relieve the staff to exercise the right of vote by availing leave, after list of voters notified along with the notification duly assigned by outgoing President and Secretary and last date of filing nomination shall be 7 days before election and final list of contestant be displayed 4 days before election and after withdrawal if any on checking and scrutiny and if any objection raised to consider and examine one day before date of election and for no objection on the date of election can be considered. The election of the Branch Executive Committee that is President, Secretary and Treasurer be by raising hands or through secret ballot and the Branch Executive Committee elected members will elect the office bearers of Divisional Executive Committee as delegates and the

Divisional Executive Committee members will elect the Zonal Executive Committee along with extra divisional units like workshop and extra units and extra divisions attached to the head quarters and under the control of zonal railway and the Central Executive Committee will be elected by the elected zonal office bearers and other production units and other office bearers of construction, organization as delegates.

4. The election notification issued by respondent Nos.1 and 2 viz., Zonal Secretary and Zonal President on 16.09.2016 stating the election for Zonal Executive Committee (for short 'ZEC') of SCR Zone, Secunderabad that to be held on 08.10.2016 at Rail Mahal Function Hall, Guntur, to elect 5 posts of said committee viz., Zonal President, Working President, Zonal Secretary, Additional Secretary and Zonal Treasurer for the reason tenure of existing ZEC was going to complete in October 2016. The Zonal Executive Committee of SCR Zone with ulterior motive of not conducting elections much less democratically at the Branch level or Divisional level or Workshop Executive Level and they are nominating their own candidates without following election procedure and they in turn or automatically electing ZEC and thereby making entire election procedure a farce. Said notification of election for the tenure of 2016-2019 issued on 16.09.2016 is illegal and same is issued calling upon persons not competent to vote who are respondent Nos.4 to 53 as if electorate, who are no other than illegally nominated persons by respondent Nos.1 and 2 to their whims being their henchmen for they were not elected as per election procedure as contemplated by bye laws and thereby not eligible to participate and vote in the Zonal election as

delegates and alleged election procedure is playing fraud on the members of the SC/ST railway employees association.

5. The Chairman railway board has also time and again issued circulars to eliminate the illegality and ill practices among SC/ST railway employees to bring transparency in the matter for its proper functioning as per bye laws vide letter No.93 dated 16.06.1994 and 10.01.1995, letter No.2005 dated 11.07.2007, letter No.2013 dated 22.07.2013, letter No.2015 dated 29.10.2015 and letter No.2015 dated 17.11.2015 based on complaints made to the Railway Administration on the ill practices in the association functioning and despite 3rd respondent did not take action against respondent Nos.1 and 2, to gain monetary benefits, portfolio, office accommodation, telephone connection and furniture etc., and misappropriation of funds by respondent Nos.1 and 2 and when questioned by treasurers not allowed to participate in the management and there is no auditing of funds during the tenure of respondent Nos.1 and 2. It is also averred that total electorate consists of 76 delegates of which 20 have been elected following procedure prescribed by bye laws as detailed in annexure-I and the remaining are the illegally nominated persons by respondent Nos.1 and 2 contra to the bye laws and procedure and the said illegal delegates 53 in number are detailed in annexure-II and there is cause of action and the claim is within limitation and the petitioners are entitled to the reliefs.

6. Pending the main petition, the petitioners of the main petition filed I.A.No.1638 of 2016 for temporary injunction restraining the respondents to conduct elections until further

orders under Order 39 CPC and the learned XXVII Additional Chief Judge (FAC) I Additional Chief Judge, City Civil Court, Secunderabad, by the impugned docket order dated 22.09.2016 saying from hearing and in the presence of the counsel for the petitioners and for no advocate represented respondents and from hearing and perusal of the material showing the averments of respondent Nos.1 and 2 are not conducting elections from the bye laws though they are bound to mandatory procedure prescribed by bye laws and election notification shall be given with stipulated time in advance by endorsing a copy of the notification to the railway authorities and to know process and to relieve the staff on leave if any to cast their vote, pursuant to the notification dated 16.09.2016 to conduct election on 08.10.2016 through the illegally nominated persons of respondent Nos.1 and 2 viz., respondent Nos.4 to 53 to make the election process a farce and therefrom and perusal of the material there is prima facie case, balance of convenience in favour of the petitioners who will suffer irreparable loss if respondent Nos.1 and 2 are allowed to conduct elections pursuant to the impugned notification on 08.10.2016, thereby granted ad interim injunction pending notice by posting the matter to 14.10.2016 to take urgent notice from the ad interim exparte order to comply with Order XXXIX Rule 3 CPC.

7. Impugning the same, present revision is maintained by the Zonal Secretary and Zonal President who are respondent Nos.1 and 2 of the main petition and the interim injunction application, against the main petition petitioner Nos.1 and 2 by showing other respondents in short cause title with endorsement of not necessary parties even arrayed as respondent Nos.3 to 53 and the grounds of

revision show that the impugned order is contrary to law, erroneous for no cogent or convincing reasons in passing the impugned exparte order which is liable to be set aside, thereby for proper reasons ought to have given in dispensing notice and passing exparte order, for no reasons given by passing the order as an empty formality in simply saying perused documents without reference to any of the documents which purportedly has substance to support the case of the petitioners to pass the impugned order by non application of the mind. Even contra to the settled law of no election matter when election process initiated ordinarily be stayed by grant of injunction and for Section 23 of the Act gives limited jurisdiction to the Court with no powers of the Civil Court to grant injunction and the remedy available if any is to challenge the elections after elections are concluded and not to interdict the election process after the notification issued and even there is caveat No.224 of 2016 even lodged, no proper notice is given before passing the interim order and having received the caveat by the main petition petitioners they filed the petition showing respondent Nos.1 and 2 to the main petition as Zonal Secretary and Zonal President to overcome the possible objections regarding caveat and the trial Court ought not to have been passed the impugned order granting injunction against election process, thereby the revision to be allowed setting aside the impugned docket order.

8. The counter affidavit filed against the revision petition relief, by the main petition petitioners, interim injunction applicants who are respondent Nos.1 and 2 with the affidavit of K.Mallikarjuna Rao with contentions that while seeking to read the

main petition averments as part and parcel of the affidavit opposing the revision and supporting the injunction order passed by the lower Court for interdicting the illegal conducting of the elections.

9. Heard both sides and perused the material on record. The propositions relied will be discussed by reference as per context in the undergoing discussion.

10. This Court having admitted the CRP on 30.09.2016 passed interim order permitting the election process scheduled on 08.10.2016 however not to declare the result. The election notification issued was on 16.09.2016. It contains the election schedule of issue of notification forms with venue at Zonal Office between 10 AM to 5 PM and during 16.09.2016 to 21.09.2016. The last date for filing nominations is 24.09.2016. The last date for raising objections is 26.09.2016. The finalization of objections is on 27.09.2016. The scrutiny of nomination forms is on 28.09.2016. The withdrawal of nomination if any is on 29.09.2016. The display of final list of contestants with symbols is on 30.09.2016. The date of election by voting through secret ballot is from 9 AM to 12.30 Noon on 08.10.2016. The counting of votes and declaration of results is on even date from 01.00 PM. The election officer and assistant staff were nominated by railway administration to conduct the elections as per the election schedule. The Chief Personal Officer, issued letter dated 22.09.2016 nominating Sri K.Balraj, A.P.O./IR/Hqrs CPO office at Rail Nilayam as the election officer to conduct the elections as per request made by main petition respondent Nos.1 and 2.

11. From the above, the ad interim injunction granted by the lower Court covered by the impugned order supra was on 22.09.2016 which is before expiry of time for filing nominations as the last date of filing nominations is 24.09.2016 as referred supra. Thus as per the pre-fixed election schedule supra the further schedule supra could not be followed by the election officer. The election officer in fact on 28.09.2016 also stated by his letter to the effect that, in view of the injunction orders supra, the election schedule could not be followed and thereby it is not possible to conduct elections as scheduled on 08.10.2016.

12. As per the system to be followed by the association election officer issues report declaring the persons elected and thereupon Central Executive Committee shall address letter to concerned railway authorities the list of elected representatives for circulation and the administration will then issue circulating letters. In the present case from said letter no election that could be conducted by the election officer from the above on 08.10.2016. Further there is no any report declaring list of elected candidates. If at all to say any election conducted, even as per the interim order passed in the revision, it is to decide therefrom ultimately how it could be by following due procedure as per the prefixed election schedule supra, leave about the very dispute on the competency of the electorate impugned in the main petition that also to decide. From averments of the outgoing president has been held the post of president for the last 12 years on the post of selected electorate and same persons issued election notification, certified the electorate and elected employees unanimously making a mockery of mandatory election procedure at various levels of

association. Some of which are even as subsequent events that are no doubt required to be taken into consideration in deciding the lis.

13. From the above, now come to the issue of competency to pass the impugned interim order, the authority which is the Tribunal undisputedly constituted under the Act, to decide the main dispute under Section 23 of the Act. For there is no specific provision in the Act for granting or not of interim relief, one shall be guided by the general principles of CPC for grant of any injunction equally to maintain any appeal against the ad interim exparte injunction as also recently held by this Court in **M/s. Bharat Cricket Club rep. by its Secretary T. Shesh Narayan Vs. The Hyderabad Cricket Association represented by its President Sri Arshad Ayub and others** in C.R.P.No.1443 of 2016 and batch by order dated 01.11.2016.

14. Coming to the very maintainability of the revision against exparte injunction order, the learned counsel for the revision petitioners who are the main petition respondent Nos.1 and 2 impugning the ad interim exparte injunction maintained the revision placed reliance on a Single Judge expression of another bench of this Court in **A.P. Arya Vysya Mahasabha, Nizamabad District Vs. Mutyapu Sudershan and Others**¹. It was observed therein that when exparte ad interim injunction order passed by trial Court is by illegal exercise of discretion in flagrant violation of the settled principles of law under Order XXXIX Rules 1 to 3 CPC by dispensing notice where Court has to record reasons for it, the

¹ 2015 (5) ALD 1

revision petition under Article 227 of Constitution of India is maintainable. There it is observed that without availing remedy under bye-laws of the Arya Vysya Mahasabha, the election process once started cannot be stopped by prohibitory injunction order as there are remedies available under Rule 27 of the bye laws of the Sabha to impugn. To apply that principle to the facts there is nothing shown by the bye laws providing any alternative and internal machinery even after election notification is issued for conducting elections, to impugn the same without approaching any Court of law and when there is need of obtaining any order of injunction if at all there are any merits to the relief including for interim exparte relief. The learned single Judge in Arya Vysya supra observed further from **G.V. Ranga Rao and Another Vs. State Electricity Board Engineers Association²**, where at Para 31 the Full Bench of this Court held that “from the discussions made hereinbefore, there is no manner of doubt that no appeal is maintainable in this Court under Order 43 Rule 1 CPC and there cannot be any doubt that revision petition is maintainable. Same was also referred in a later single judge bench expression in **Viswender Arya and Others Vs. Arya Pratinidhi Sabha and Others³**. The learned single judge bench expression so referred including the expression in **Hyderabad Cricket Association, Secunderabad vs. Cambridge Cricket Club and Others⁴** in holding on maintainability of revision when the order passed by the trial Court is by illegal exercise of discretion since prone to jurisdiction under Article 227 of the Constitution. The learned

² 2001 (5) ALD 705 (FB)

³ 2003 (3) ALD 153

⁴ 2002 (6) ALT 268

single Judge also referred a subsequent Division Bench expression in **Innovative Pharma Surgicals Vs. Pigeon Medical Devices Private Limited and Others**⁵ at Para 15 that “in fact we have never expressed any doubt as to the maintainability of appeal and are of the view that the appeal against ad-interim injunction is maintainable under Order 43 Rule 1 (r) CPC. The Division Bench at Para 24 observed further that was referred by learned single Judge in quoting at Para 16 that “the immediate remedy that is available to the opposite party in case of issuing temporary injunction without issuing notice, is under the provisions of Order 39, Rule 4 C.P.C., which enables the Original Court to vary or set aside or discharge the ex parte order. In the light of the above provisions and also the legal propositions, no appeal lies, as a matter of course, against an ex parte order, except in extraordinary circumstances or the rarest of the rare cases, where the order is perverse or biased or suffers from lack of jurisdiction, but it is not the case of the petitioner.”

15. From the above what is observed further by the learned single Judge is that writ petition is maintainable as the ad-interim exparte injunction granted is in illegal exercise of discretion by trial Court in flagrant violation of settled principles of law and in saying thereby Division Bench expression has no application directly to that case on hand of **Arya Vysya supra** for there is bye law Rule 27 provided other machinery even after election process started. The learned single Judge also referred in Arya Vysya supra, the expression of the Apex Court in **Supreme Court Association Vs.**

⁵ AIR 2004 AP 310

B.D. Kaushik⁶ Para 60 that, since 1952 Court authoritatively laid down that once election process is started, Court should not ordinarily interfere with the said process by way of granting injunction apart from the provisions of Order 39 Rules 1 and 2 read with Section 151 CPC, Court could not have ignored on the effect of granting injunction. If the injunction granted had not been stayed by this Court, office bearers of SCBA would have been required to prepare a new voters list as if common amended rule is in operation and the exercise undertaken by them for preparing the existing voters list in the light of amended list 18 would have been of no consequence. Thus the injunction claimed by respondents/plaintiffs which had very wide repercussions on the election, which were to be held in the year 2003, should not have been granted by the learned Judge. The impugned order is liable to be set aside on another ground that though suits not filed in a representative capacity, injunction granted by Court restraining appellants from implementing the resolution dated 18.02.2003 in respect of all advocates and not for only the two advocates-plaintiffs of O.S.Nos.100 & 101 of 2003 respectively. The learned single Judge in Arya Vysya supra referred another expression of the Apex Court in **Sri Sant Sadguru Swami (MM) Sahakari Dughda Utpadak Sanstha and Another Vs. State of Maharashtra and Others**⁷ where it was held that a breach of any rule of seeking mandatory provision of the rules were not complied with while preparing electorate roll, the same could be challenged under the rule 81 (d) clause (4) of the Rules by means of election petition.

⁶ (2011) 13 SCC 774

⁷ 2001 (8) SCC 509

16. It is needless to say from the very expression of the Apex Court in **Sri Sant Sadguru** supra of there are specific rules in preparing electorate rolls for any breach committed that can be subject matter of election petition. In the case on hand there is nothing shown of any specific rule with internal mechanism like in **Arya Vysya** supra is in existence. It is needless to say there are no precedents on facts for each case depends on own facts and even a little change in the facts in applying principles may tilt the result as per the settled expressions of the Apex Court laying down as law of the land. Though it is the general principle as laid down under the representation of the peoples Act and in extending to other cases of election that election process once started, Courts cannot ordinarily grant injunction interdicting the election process, the Apex Court's expressions referred supra clearly say that Courts cannot ordinarily interdict the election process, but did not say Courts shall not at all interdict the election process. Thus though Courts got power, however cannot be invoked in routine but for there are exceptional circumstances and facts. So far as **Kaushik (SCBA) supra** of the Supreme Court Bar Associations elections, there the list prepared pursuant to the resolution of 2003 when that was challenged by 2 members and not by all or in a representative capacity for all what was observed is repercussions of the list prepared after that resolution having taken a long ordeal and it is not possible to prepare another list going back to that prior stage of resolution that is the consequence to weigh in its observation for not to interdict the election process. Thus the facts of that case are entirely different from the facts of the case on hand. Even the learned single Judge in **Arya Vysya** supra referred

the Division Bench expression which is subsequent to the Full Bench expression in its saying appeal is maintainable and same is the proper remedy. The Division Bench also stated that the recourse as a rare case is to approach the appellate authority and not at all to invoke the writ jurisdiction, but for applying in normal course under Order 39 Rule 4 CPC if any except in a rare case by appeal against the exparte interim injunction order. The impugned order even must be shown from above single judge expression referring to other propositions if at all to maintain revision under Article 227 of the Constitution is a perverse or biased one or suffers from inherent lack of jurisdiction. When such is not the case on hand, the revision cannot be maintained but for at best to file an appeal.

17. In this regard, it is necessary to say further that the ad interim injunction granted and sought for is under Order 39 Rules 1 and 2 CPC. For granting such an injunction under order 39 Rule 1 and 2, what Rule 3 says is, before granting injunction except where it appears to the Court that the object of granting injunction would be defeated by delay to dispense with notice, Court shall direct in all cases notice of the application to be given to opposite party, and for dispense with notice for granting of ad-interim exparte injunction, Court shall record reasons for its opinion that the object of granting injunction would be defeated by delay and compliance of sending to the opposite party immediately after granting exparte injunction copy of application for injunction with affidavit in support of the petition and copy of plaint and copies of documents relied and affidavit stating said compliance. It is not a case of such compliance is not made in the case on hand

so far as sending of copies of the ad-interim ex parte injunction. The only thing that to be considered therefrom is whether reasons are recorded of the opinion of the Court if notice is ordered before granting ex parte injunction the object of granting injunction would be defeated by delay. In this regard, it is necessary to mention that pleadings are not the reproduction of law but for mention of facts in brief and in understanding the pleadings once it conveys the meaning required by law is enough for appreciation as in understanding the pleadings, it is spirit from its reading for Court cannot keep its commonsense in cold storage as per the expression of the Apex Court in **S.B.Noronal Vs Prem Kundi**⁸. The plaint averments discussed supra with supporting affidavit averments contain the case as per the trial Court made out and from the impugned order not only heard but also perused the documents as the plaint enclosures contain as many as 30 documents some of which referred in the plaint as part of the plaint averments including the bye laws and the process for conducting of the elections, manner in which electorate prepared in its impugning of there is no eligibility. When the order reflects the same in saying there is making out of not only a prima facie case as one of the pre-requisites but also balance of convenience in favour of the petitioners/plaintiffs who will suffer irreparable loss unless the process of election be interdicted that was already commenced pursuant to the notification dated 16.09.2016 to held on 08.10.2016 in passing said order on 22.09.2016 in granting the ad-interim injunction and in the meanwhile ordered to issue urgent notice to the respondents by fixing date for further hearing

⁸ AIR 1989 SC 193

on 14.10.2016, which is no doubt subsequent to the date for conducting of elections on 08.10.2016, but for to say the order is silent as to the very purpose of the main relief being defeated if no exparte interim order is passed. When the circumstances reflect the same as unless the injunction order is being granted, election process not only be completed to conclude on 08.10.2016 but also as per the election schedule results being declared on same day within no lapse of time after concluding from the time schedule prefixed for the elections, it cannot be said the order impugned in the revision is per se illegal from not reflecting the reasons in so many words when impliedly included. The expression of the Apex Court in **Skyline Education Institute (India) Private Limited Vs. S.L. Vaswani and Another**⁹ categorically holds that, when the trial Court in exercise of its discretion granted interim injunction and when a reading shows its action on the basis of objective consideration of the material, appellate Court will be loath to interfere. When such is the proposition, it is hardly difficult to set aside the order by sitting in revision on that ground of the reasons impliedly included referred supra are not expressed in so many words reflects in the ad interim exparte injunction. Beyond that it is not at all necessary to go into the other merits of the order as to whether otherwise sustainable or not if impugned in appeal or by seeking, on application to modify or set aside or vary. Thus from the above the facts on hand, it hardly requires interference by sitting in revision bypassing the appeal or other efficacious remedies available from what is discussed supra, that too when the Division Bench categorically stated that appeal lies against an

⁹ AIR 2010 SC 3221

ad interim injunction, no doubt only in extraordinary circumstances, for the ordinary recourse is to file application to modify, vary or set aside under Order 39 Rule 4 CPC that is also discussed by the learned single Judge in Arya Vysya supra. In fact the Supreme Court in **A. Venkata Subbaiah Naidu Vs. S.Chellappan and Others**¹⁰ also held that an ad-interim injunction is prone to appeal. Once such is the case, the learned single Judge in Arya Vysya supra even observed as no appeal remedy is available, same is not sustainable not only from the above expressions including of A.Venkata Subbaiah Naidu supra but also the wording of Order 43 Rule clause (r) CPC of an appeal shall lie from the following orders under the provisions of Section 104 CPC namely Clause (r) an order under rule 1, 2, 2-A, 4 or 10 of Order 39 CPC. It is not in dispute of the ad-interim injunction passed is under Order 39 Rules 1 and 2 CPC and the provision clearly speaks appeal lies that what rightly observed by the Division Bench also in **Innovative** supra and that what earlier held also by the Apex Court in **Venkata Subbaiah Naidu** supra.

18. Contra to it learned counsel for the revision respondents/plaintiffs relied on the Division Bench expression of the Delhi High Court in **Delhi Bar Association Vs. Delhi High Court Bar Association**¹¹ where it is observed from Para 24, while sitting against the order of the learned Single Judge, that the learned single Judge was under a mistaken impression that under no circumstances could an election be interfered with once election has been set in motion. The Supreme Court's expressions in **N.P.**

¹⁰ 2001 (1) ALD (1) SC

¹¹ Laws(Dlh)-2013-12-9

Punnuswami Vs. The Returning Officer¹², Mohinder Singh Gill Vs. The Chief Election Commissioner¹³ and Election Commission of India Vs. Ashok Kumar and Others¹⁴ which all involved elections either to the House of Parliament or to the House of legislature of a State where the Article 329(b) of the Constitution comes into play to a bar calling in question such an election except by way of election petition under any law made by the appropriate legislature. That Article is not involved in the elections to the office bearers of the association for the bar association in question. Nevertheless, as observed by this Court in **Yatching Association of India referring to Punnuswami supra**, the principles of law relating to elections of type mentioned in Article 329(b) have been extended elections in general also, as in the case of election by managing committee of a society as held in **Sri Sant Sadguru supra**, for such elections as are outside the scope of Article 329(b), Courts have as a rule of prudence generally adopt the hands off approach during pendency of election process, but the absolute bar imposed by Article 329(b) is not there and it is why in **B.D.Kaushik (SCBA) supra** observed only that Court should not ordinarily interfere with election process for the care and caution to be exercised in interfering with election process.

19. In fact the Apex Court in **Deoraj Vs. State of Maharashtra¹⁵** observed that ordinarily, the rule of discretion developed by experience, inasmuch as indulgence being shown at an interim stage of proceedings before the competent Court or Tribunal results in duplication of proceedings, while the main

¹² AIR 1952 SC 64

¹³ AIR 1978 SC 851

¹⁴ 2000 (8) SCC 216

¹⁵ (2004) 4 SCC 697

matter is yet to be heard by the Court or Tribunal seized of the hearing and competent to do so, valuable time and energy of the superior Courts consumed in adjudicating upon a controversy, the life of which is co-terminous with the life of the main matter itself which is not before it, and there is duplication of pleadings and documents which of necessity shall have to be placed on the record as well. The rule of discretion is followed in practicing by way of just self imposed not to sit against to interfere but for to take a reasonable time in disposing by the Courts or Tribunals. It is observed by leaving to decide by the Court or Tribunal, the matter on merits an order of interim relief may or may not be reasoned one but the factors of prima facie case, irreparable injury and balance of convenience do work at the back of the one who passed an order of interim nature. Ordinarily the Courts are inclined to maintain status quo as obtaining on the date of commencement of the proceedings. However, there are few cases which call for the Court's leaning not in favour of maintaining status quo and still lesser in percentage are the cases when an order tantamounting to mandamus is issued even at an interim stage. There are matters of significance and of moment posing themselves as moment of truth. Such cases do cause dilemma and puts the wits of any Judge to test. Situations emerge where granting of relief would tantamount granting final relief itself and then there may be converse cases where withholding interim relief tantamount dismissal of the main petition itself; for, by the time of main matter comes up for hearing there would be nothing left to be allowed as the relief to the petitioner though all the findings may be in his favour. In such cases the availability of very strong prima facie

case of a standard much higher than which prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of convenience totally in favour of the applicant may persuade the Court to grant interim relief though it amounts to granting final relief itself. Of Course, such would be rare and exceptional cases. The Court would grant such interim relief if satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing and at an end the Court would not be able to vindicate the cause of justice.

Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship the conduct of the parties shall also have to be seen and Court may put the parties on such terms as may be prudent. In fact the division bench expression of this Court referred *supra* also in tune to it though not in so many terms. The recent expression of this Court in *M/s. Bharat Cricket Club* *supra* and another recent expression past division bench expression of this Court in **M/s. Gharonda Builders and Developers Limited and Another Vs. Smt. Gayathri and Others** in CRP.No.3999 of 2015 dated 11.08.2016 is also made clear the scope of law in this regard.

20. Thus, there is no absolute rule that in an election process once commenced, interdicting the same relief cannot be granted, as it all depends upon the facts and circumstances of each case from material on record and giving of detailed reasons is not even necessary but application of mind of the Court to the facts and circumstances is there or not alone mainly to consider

and that too by sitting in revision within its limited scope as per the well settled expressions of the Apex Court in **Shalini Shyam Shetty Vs. Rajendra Shankar Patil**¹⁶ quoted with approval in **Radhey Shyam and Another Vs. Chhabi Nath and Others**¹⁷.

21. Here coming back to the facts, when it is the complaint of there is violation of bye laws in fixing election schedule and process and leave about the other controversy as to the impugned order otherwise survives or not to decide by maintaining appeal since lies even shown as an exceptional case, if not availed remedy in the ordinary course contemplated of filing application under order 39 Rule 4 CPC, remedy is left open to invoke either way.

22. Because this Court while admitting the revision passed the order of the process of the election shall go on and not to declare the result, and from the counter affidavit in the revision there is no time for completing the election process from the very proceedings of the election officer, leave about how far election properly conducted if at all or not is the matter to decide in the event of filing of an appeal or injunction vacate petition to modify or vary or set aside as the case may be.

23. Accordingly and in the result, by upholding the interim order dated 30.09.2016 passed by this Court (subject to its practical possibility that also left open to impugn if anything shown done on its correctness ultimately in the main matter), the revision is disposed of giving liberty to the revision petitioners to approach either the trial Court by filing counter affidavit if not already filed with prayer by application to vacate or modify the

¹⁶ (2010) 8 SCC 329

¹⁷ (2015) 5 SCC 423 (LB)

interim injunction to decide on own merits under Order 39 Rule 4 CPC or to maintain appeal since otherwise maintainable as discussed supra under Order 43 Rule 1 clause (r) CPC. Needless to say, in the event of filing application under Order XXXIX Rule 4 CPC the trial Court shall decide as expeditiously as possible and in the event of filing appeal without regard to limitation within one week from the date of receipt of this order, the appellate Court shall entertain for deciding on own merits as expeditiously as possible.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 20.01.2017
Note: L.R. Copy to be marked
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