

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

CRP (PD) NOS.2355 AND 2866 OF 2016

AND

CMP NOS.12198 AND 14561 OF 2016

CRP (PD) NO.2355 OF 2016

1.V.R.Alagappan
2.V.P.Mohan Kumar
3.R.Ravi Venkatesh

... Petitioners

Vs.

1.N.Senthilkumar
2.The Coimbatore Cosmopolitan Club
Rep. by its President
200, Race Course,
Coimbatore - 641 018.

3.R.Aravindhan
4.Suresh Rajeswaran
5.D.Damodharaswamy
6.E.Ranga Rao
(6th Respondent impleaded as per order
dated 22.12.2016 made in CMP No.
12973 of 2016 in CRP (PD) No.2355/2016)

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the petition and order dated 18.07.2016 made in I.A.No.1221 of 2016 in O.S.No.991 of 2016 by the Principal District Munsif, Coimbatore.

For Petitioners : Mr.T.R.Rajagopalan
Senior Counsel
for Ms.P.Veena Suresh

For Respondent-1 : Mr.V.Raghavachari

For Respondent-2 : Mr.H.Karthik Seshadri

CRP (PD) NO.2866 OF 2016

Vijay Venkataswamy ... Petitioner

Vs.

1.N.Senthilkumar

2.The Coimbatore Cosmopolitan Club
Rep. by its President
200, Race Course,
Coimbatore - 641 018.

3.R.Aravindhan

4.Suresh Rajeswaran

5.D.Damodharaswamy

6.D.Balasundaram

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the petition against strike off I.A.No.1287 of 2016 in I.A.No.1221 of 2016 in O.S.No.991 of 2016 by the Principal District Munsif, Coimbatore.

For Petitioner : Mr.Somayaji
Senior Counsel
for Mr.N.Anand Venkatesh

For Respondent-1 : Mr.V.Raghavachari
for Mr.D.Karthik Raja

COMMON ORDER**CRP(PD) NO.2355 OF 2016**

This Civil Revision Petition is directed against the order of injunction granted by the Trial Court under Order XXXIX Rules 1 and 2 of the Civil Procedure Code.

2. According to the plaintiff / first respondent herein, he is a Member of the first defendant Club/second respondent. The first defendant/second respondent is a Charitable company incorporated under Section 8 of the Companies Act, 2013. The functioning of the Club is governed by the bylaws in the form of Memorandum and Articles of Association. As per the Memorandum and Articles of Association, 12 Directors, form the Executive Committee, decide the day today affairs of the first defendant/second respondent and they are accountable to its Members. As per the bylaws, every year, four of the Directors would retire by rotation and elections would take place by ballot for the purpose of electing the Directors. The first defendant/second respondent, in its 126th Annual General Body Meeting, proposed to hold an election on 21.07.2016 for the post of President and 3 Directors. An Election Committee was constituted comprising of 3 Members viz.,

defendants 2 to 4 / respondents 3, 4 and 5. The Executive Committee of the first defendant/second respondent, in an arbitrary manner, adopted an Election Code of Conduct 2016, in the Executive Committee meeting conducted on 20.06.2016. Clause 6(c) of the Election Code of Conduct 2016 restricts communication being sent by the candidates to the Members and further demanded payment of Rs.1,00,000/- to contest for the post of Director. The payment of Rs.1,00,000/- is exempted as per the Notification issued by the Government of India, in Notification No.GSR 466 (E) dated 05.06.2015. The first defendant is exempted under Section 160 of the Companies Act, 2013, from demanding Rs.1,00,000/- for contesting in the election.

3. Therefore, the plaintiff/first respondent filed a suit for declaring the Election Code of Conduct framed by the Executive Committee of the first defendant/second respondent for the election to be held on 21.07.2016 as illegal and for a consequential relief of declaration declaring the rejection of nomination of the plaintiff for the post of Director in the first defendant Club as illegal and for permanent injunction restraining the defendants from choosing defendants 5 to 7 / petitioners herein, to act as Directors.

4. The Trial Court on 18.07.2016, took up the matter for consideration. On that day, the Secretary of the first defendant Club/second respondent and defendants 5 to 7/petitioners herein, appeared and represented before the Court. However, considering the injury caused to the plaintiff/first respondent, the Trial Court has granted an order of interim injunction restraining the defendants from proceeding with the election process till 20.07.2016. On 20.07.2016, respondents 2,4,5, 6 and 7, filed counter and the Trial Court, after hearing the parties, adjourned the matter to 29.07.2016 that the issues would be decided later. Aggrieved over the order passed by the Trial Court, the defendants 5 to 7/petitioners herein, are before this Court, in CRP (PD) No.2355 of 2016.

5. According to the petitioners, the interim order was passed without application of mind, contrary to the statute and without jurisdiction. As per Section 160 of the Companies Act, 2013, a person who is contesting for the post of Director, shall deposit a sum of Rs.1,00,000/-. The Government of India, by its Notification No.GSR 466(E) dated 05.06.2015, exempted payment to the Companies, whose Articles of Association provides for election of Directors by ballot. Admittedly, the first defendant Club is functioning as per the

6. As per Article 46 of the Memorandum and Articles of Association *"every resolution put to the vote of a general meeting shall, unless a poll is demanded, be decided on a show of hands. A decision by the Chairman, that a resolution has, on a show of hands been carried or carried unanimously, or by a particular majority or lost and an entry to that effect in the book of the proceedings of the Club shall be conclusive evidence of the fact without proof of the number of votes received in favour of or against that resolution"*. Since the election is conducted by show of hands and not by ballot, the deposit as per Section 160 of the Companies Act, 2013, is mandatory and the Notification dated 05.06.2015, is not applicable to the first defendant Club. Further, the first defendant Club, in its counter has categorically stated that without prejudice to its submissions, the respondents are agreeable to permit the plaintiff/first respondent to conduct election for Directorship at the meeting held on 21.07.2016 subject to the outcome of the interlocutory application and suit. Despite the filing of the counter affidavits on behalf of all the parties and despite hearing the arguments, the order passed by the Trial Court dated 18.07.2016 is improper, irregular and illegal exercise of power.

7. Per contra, the learned counsel appearing for the respondents would contend that when there is an effective appeal remedy is available against the order passed by the Trial Court, the Civil Revision Petition under Article 227 of the Constitution of India, is not maintainable. He would rely on the judgments of this Court in **K.PONNAMMAL AND OTHERS VS. V.THAYANBAN AND OTHERS [2012 (2) MWN (CIVIL) 561]** and **GOVERNING COUNCIL OF AMERICAN COLLEGE VS. DR.M.DAVAMANI CHRISTOBER [2010 (6) MLJ 172]** wherein it is held that *"against an order of injunction, the defendants can either file an appeal under Order 43 Rule 1 CPC or appear in suit and oppose interim injunction granted by Court and can also file an application for rejection of plaint."* When an alternative remedy being available, the Civil Revision Petition is not maintainable and therefore, the Civil Revision Petition is liable to be dismissed.

8. The learned Senior Counsel appearing for the petitioners would contend that right to vote is neither a common law right nor fundamental right and it is a statutory right prescribed by the statute and that no Member has a right to claim an injunction so as to stall the formation of the Governing Body of the Association. In support of his

contention, the learned Senior Counsel appearing for the petitioners would rely on the judgment of the Hon'ble Supreme Court in **SUPREME COURT BAR ASSOCIATION AND OTHERS VS. B.D.KAUSHIK [2011 (13) SCC 774]** and paragraphs 43, 44 and 48 of the said judgment are extracted hereunder:

"43. It hardly needs to be emphasized that in any Body governed by democratic principles, no member has a right to claim an injunction so as to stall the formation of the Governing Body of the Association. No such right exists in election matters since exercise of a right conferred by a rule is always subject to the qualifications prescribed and limitations imposed thereunder. The contention of the respondents that the amendment to Rule whereunder the right to be eligible to contest for any post for the Association or the eligibility to cast the vote at the election, takes away the right completely, is misconceived since by the amendment the right is not taken away but is preserved subject to certain restrictions on its exercise and this could always be done.

44. It is important to notice that what the impugned Rule does is that it only declares the eligibility of a member to contest and vote and does not take away ipso facto the

right to vote. The impugned Rule only prescribes the eligibility or makes a person ineligible in the circumstances stated therein which is the nature of a reasonable restriction as the right to vote is neither a common law right nor Fundamental Right but a statutory right prescribed by the statute as has been held in several reported decisions of this Court. What is necessary to be noticed here is that the impugned clause in the Rule is not the only clause prescribing ineligibility to vote as there are other eligibility conditions or ineligibility restrictions within Rule 18, which may also make a person ineligible to vote. The challenge, therefore, to this ineligibility of filing a declaration not to vote at the elections to any other Bar Association is erroneous in law.

48. The restriction on the right to vote of a member is provided with an avowed object of better welfare and convenience of those advocates, who are regularly practicing in this Court and who are directly concerned with day-to-day affairs of the Supreme Court. Such restriction in fact subserves [Article 145](#) of the Constitution and other statutory provisions relating to advocates. As right to vote is not an absolute right recognized in common law and is always subject to the statute/Rules creating such rights, it is equally well settled that the exercise of such right could

always be subject to the provisions of the Statute/Rules creating it. Under the circumstances, the contention advanced by the respondents that their right to vote was either curtailed or abridged should not have been lightly accepted by the learned Judge."

9. The learned Senior Counsel appearing for the petitioners would further rely on a judgment of the Hon'ble Supreme Court **SURYA DEV RAI VS. RAM CHANDER RAI AND OTHERS [2003 (4) CTC 176]** wherein it is held that *"....However, there may be cases where but for invoking the supervisory jurisdiction, the jurisdictional error committed by the inferior court or tribunal would be incapable of being remedied once proceedings have concluded."*

10. Further, the learned Senior Counsel appearing for the petitioners would rely on a judgment of this Court in **SOUTHERN AND RAJAMANI TRANSPORT PRIVATE LIMITED AND OTHERS VS. R.SRINIVASAN AND OTHERS [2010 (4) CTC 690]** wherein it is held that *"jurisdiction under Article 227 can be invoked: (a) to prevent abuse of process of law; (b) to prevent miscarriage of justice; (c) to prevent grave injustice; and (d) to establish both administrative as well as judicial power of the High Court."*

11. This Court has considered the rival contentions.

12. In the instant case, it has to be seen as to whether the Trial Court exercised its power without jurisdiction or in excess of jurisdiction or exercised in a manner not permitted by law and failure of justice for grave injustice occasioned ever.

13. Article 46 of the Memorandum and Articles of Association of the first defendant Club / second respondent herein, reads as under:

"46. Every resolution put to the vote of a general meeting shall, unless a poll is demanded, be decided on a show of hands. A decision by the Chairman, that a resolution has, on a show of hands been carried or carried unanimously, or by a particular majority or lost and an entry to that effect in the book of the proceedings of the Club shall be conclusive evidence of the fact without proof of the number of votes received in favour of or against that resolution".

14. From the above, it is clear that every resolution put to vote in a General Meeting shall be decided by show of hands, unless a

poll is demanded. In the instant case, it is not the case of the plaintiff/first respondent that he demanded poll before or after the voting on any resolution on a show of hands. In the absence of any demand for poll, the decision of the Chairman is final. The notice for General Body meeting was admittedly received by the plaintiff/first respondent as early as on 06.07.2016. He has not chosen to make any demand for poll by ballot. In the absence of any material to show that (a) the election is conducted by ballot, or (b) that the Articles of Association mandates the election of Director is by ballot, it shall be construed that the election of Directors is by show of hands and not by ballot. The Notification No.GSR 466 (E) dated 05.06.2015 reveals that the payment of deposit as per Section 160 of the Companies Act, 2013, shall not apply to companies, whose articles provides for election of Directors by ballot.

15. As discussed earlier, the Articles of Association provides for election by show of hands and not by ballot. In such circumstances, without considering the statutory requirement, the Trial Court has proceeded to hold that injury is caused to the plaintiff/first respondent. When a statutory requirement mandates a particular act, it shall be

strictly adhered to. In the event of any doubt or clarification required,

the plaintiff/first respondent must have approached the concerned persons. In this case, the plaintiff/first respondent must have approached the defendants 2 to 4 for clarification, as specified in the notice, within seven days of its publication. But despite receiving the notice on 06.07.2016, the plaintiff/first respondent has chosen to approach the Court only at the fag end of the election process.

16. In this regard, it is useful to refer to the judgment of the Hon'ble Supreme Court in **MORGAN STANLEY MUTUAL FUND VS. KARTICK DAS [1994 (4) SCC 225]** wherein it is held as under:

"42..... The Court is approached at the last minute. Could injunction be granted even without notice to the respondent which will cause immense hardship and administrative inconvenience. It may be sometimes difficult even to undo the damage by such an interim order. Therefore, the court must ensure that the plaintiff comes to court well in time so that notice may be served on the defendant and he may have his say before any interim order is passed. The reasons set out in the proceeding paragraphs of our judgment in relation to the fact which should weigh with the court in the grant of exparte injunction and the rulings of this Court must be borne in mind. "

17. In the instant case, the plaintiff/first respondent has approached the Court at the fag end of election. Further, it is very important to note that the Secretary of the first defendant Club and the rival contestants namely defendants 5 to 7, have appeared before the Court and represented their case. A perusal of the interim order dated 18.07.2016 reveal that the Secretary of the first defendant Club and defendants 5 to 7, have strenuously contended that the Notification relied on by the plaintiff/first respondent is not applicable to the case. But considering the injury caused to the plaintiff/first respondent, injunction was granted till 20.07.2016.

18. So far as the exercise of discretionary power of grant of injunction is concerned, this Court under Article 227 of the Constitution, cannot interfere with the order, as if it is sitting on Appeal. However, on 20.07.2016, the Election Committee appointed by the first defendant Club and the contesting candidates have filed their counter and argued the matter. In the event of their appearance before the Court with counter affidavits and also argued the matter, it is incumbent on the part of the Court to consider the same and pass orders on merits. In election matters, normally when election process commences, the Court shall not interfere. The results of the election is subject to the final

outcome of the litigation. But, the learned District Munsif failed to exercise the power vested in him, but exercised the same in a manner not permitted by law, causing injustice to the parties. When the contesting parties appeared before the Court and put forward the statutory requirements and also the uniform practice adopted by them in respect of other candidates, as well as in the past elections, the learned District Munsif, ought to have passed orders on merits.

19. It is also to be seen that it is a dispute pertaining to a company. Any dispute with respect to the company shall be raised before the Tribunal constituted under the Companies Act, 2013. Section 430 of the Companies Act, 2013, clearly bars the jurisdiction of the Civil Courts.

20. Be that as it may, under Article 227 of the Constitution of India, this Court has supervisory jurisdiction, when the Subordinate Courts failed to exercise its jurisdiction, which it does have, and exercised the jurisdiction irregularly, in a manner not permitted by law, causing injustice to a party, the said order can be interfered with.

21. More so, when a clear affidavit is filed before the Court

by all the defendants that without prejudice to their contentions, the

plaintiff/first respondent, can be permitted to contest in the election, subject to the result of the litigation. The Trial Court must have exercised its power in a manner known to law, permitting the election process to go on, without stalling the formation of a Governing Body of the Club, for, it is held by the Hon'ble Supreme Court that the defendants must have a say before the interim order is passed. In the instant case, the *prima facie* case as well as the balance of convenience lies in favour of the defendants. However, without discussing the relevant factors, the Trial Court, has simply adjourned the matter for deciding the issue on a later date, is patently irregular and leads to miscarriage of justice.

22. Though the relief sought is only in respect of election to the post of 3 directors viz., defendants 5 to 7, the Trial Court exceeded its jurisdiction in stalling the entire election process for all the posts. Therefore, the order passed by the Trial Court is beyond the scope of the prayer sought for and accordingly, is illegal.

23. In such circumstances, this Court is of the considered opinion that the order passed by the Trial Court is patently illegal and is accordingly, set aside. The first defendant club is entitled to conduct

election in compliance with Section 160 of the Companies Act, 2013, subject to result of the suit in O.S.No.991 of 2016. In the event of success, the plaintiff/first respondent will be entitled to have the election set aside and to have a fresh election. The Trial Court is directed to complete the trial within a period of three months from the date of receipt of a copy of this order, without being influenced by the order passed by this Court, in the above Civil Revision Petition. The Civil Revision Petition in CRP (PD) NO.2355 OF 2016 is allowed with the above observations.

CRP (PD) NO.2866 OF 2015

24. In the above Civil Revision Petition, the order passed by the Trial Court under Order 39 Rule 2(a) of the Civil Procedure Code is put to challenge.

25. Pursuant to the injunction order granted in I.A.No.1221 of 2016 in O.S.No.991 of 2016, dated 18.07.2016, the first defendant Club stalled the election for the post of 3 Directors. However, since there was no contest to the post of President, the petitioner was declared elected unanimously. The plaintiff/first respondent filed a

petition under Order 39 Rule 2(a) of the Civil Procedure Code for detaining the respondents in Civil Prison for disobedience of the ad-interim injunction.

26. The learned counsel appearing for the petitioner / 6th respondent / contemnor in the interlocutory application, has challenged the same. It is the contention of the petitioner that he was not at all a party to the previous suit and no injunction was sought against the post of President. Further, there was no election to the post of President and he was declared as such unanimously, without any opposition. Therefore, it cannot be construed that election was held contrary to the injunction order granted by the Trial Court

27. The learned counsel appearing for the respondents would contend that when a person is having knowledge of the prohibitory order of the Court, even if he is not a party on record, he is punishable for committal. In support of his contention, the learned counsel would rely on a judgment of this Court in **NALLA SENAPATHI SARKARAI MANRADIAR VS. SRI AMBAL MILLS (P) LIMITED AND OTHERS [AIR 1966 MADRAS 53 (VOL.53, C.22)]** wherein it is held as under:

".... It is not in dispute that a contempt in court might be committed even by a party who is not a party on record, in the order which is the subject of contempt. It is sufficient to refer here to Halsbury's Laws of England, 3rd Edn., Vol.8, Part I, Sec.3, Sub-Section 39, (also see Oswald on Contempt 1910 Edn. page 106) which runs thus:

"A stranger to an action who aids and abets the breach of a prohibitory order obstructs the course of justice, and this contempt is punishable by committal or attachment." "

28. The main suit filed by the plaintiff/first respondent was against the post of 3 Directors, with respect to defendants 5 to 7/ respondents 3, 4 and 5. There is no allegation against the post of President. From a perusal of the materials available before the Court, originally there were two contestants. One of the contestants has withdrawn, in view of the interim order granted by this Court. On the date of General Body Meeting, there was no contest for the post of President, except by the revision petitioner. The first defendant Club has no other go, other than passing a resolution declaring him as a President.

<http://www.judis.nic.in> The Trial Court's order is only to stall the election process. Admittedly,

the plaintiff/first respondent has not contested for the post of President nor he challenged the election to the post of President. In that event, there is no cause of action against the revision petitioner in the suit. Only because a petition under Order 39 Rule 2(a) of the Civil Procedure Code is filed, the Trial Court shall not pass orders, without application of mind. Before issuing notice, it is incumbent on the part of the Trial Court to apply its mind as to whether any act of contempt is committed or not. The Trial Court, without application of mind, has issued notice as if, there was election conducted by the first defendant Club for the post of 3 Directors, in violation of the order of interim injunction granted by it. Thus, the order passed by the Trial Court is without application of mind.

29. Since the facts lead to show that there is no cause of action for issuing a contempt notice and the manner of passing order mechanically, without application of mind, clearly shows that the order passed by the Trial Court, is absolutely illegal, this Court is of the opinion that the plaintiff has indulged in instituting frivolous applications, without cause of action and thereby, abuses the process of law.

30. Considering the same, this Court is inclined to strike off the interlocutory application in I.A.No.1287 of 2016 in I.A.No.1221 of 2016 in O.S.No.991 of 2016 on the file of the Principal District Munsif, Coimbatore and accordingly, is struck off.

31. In fine, both the Civil Revision Petitions viz., CRP (PD) Nos.2355 of 2016 and 2866 of 2016 are allowed. No costs. Consequently, connected civil miscellaneous petitions are closed.

29.06.2018

Index : Yes/No
Internet : Yes/No
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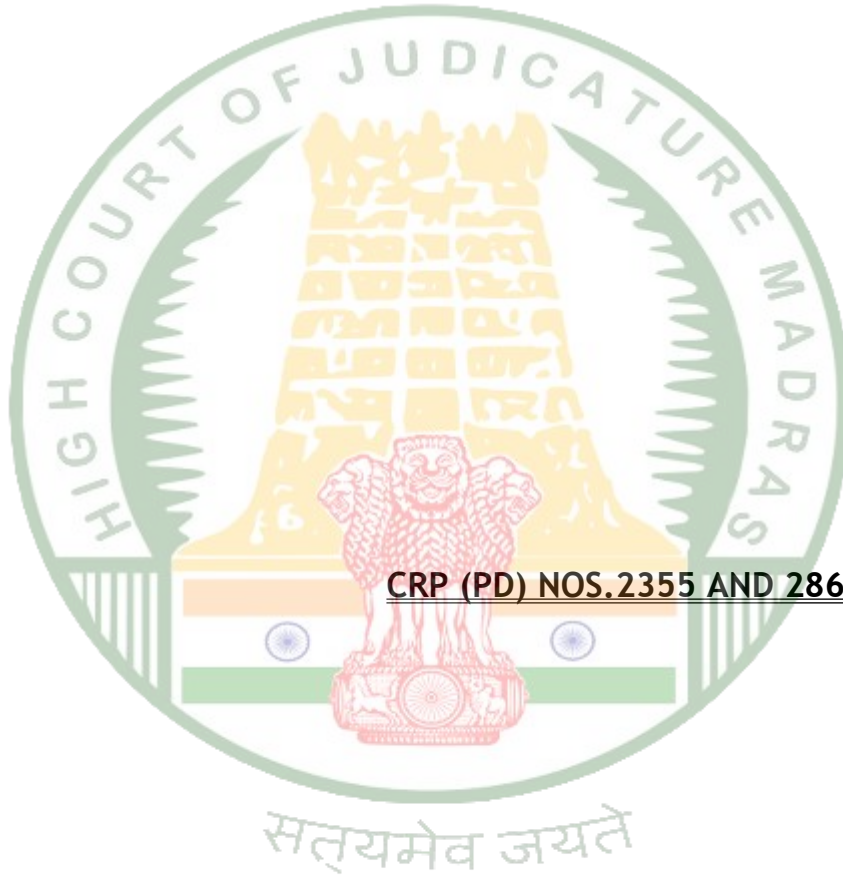
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The Principal District Munsif
Coimbatore.

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M.GOVINDARAJ, J.

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CRP (PD) NOS.2355 AND 2866 OF 2016

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