



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.06.2018
Delivered on : 21.08.2018

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THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.1084 of 2018
and
C.M.P. (MD) No.4717 of 2018

1. Tuticorin Educational Society,
Through its Authorised Authority,
No.488/1, Thiruchendur Road,
Tuticorin - 628 003.

2. A.Rajendran

... Petitioners

vs.

1. Virudhunagar Hindu Nadargal Dharma
Paribalana Sabai,
Through its President,
Door No.78, Deverpuram Road,
Tuticorin.

2. Thoothukudiyil Arupukottai Hindu Nadargal
Mahamai Paribalana Sangam,
Through its Secretary,
Door No.106H/5C, Millerpuram,
Tuticorin - 8.

3. Thirumangalam Pandiyakula Sathriya Nadar
Mahamai Paribalana Sangam,
Through its Secretary,
Door No.85/2, Ettayapuram Road,
Tuticorin - 2.

4. G.Kathiresan,
Managing Director,
Sinnamani Finance Limited Company

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair Order dated 26.04.2018 made in I.A.No.386 of 2018 in O.S.No.145 of 2018, on the file of District Munsif, Thoothukudi.



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For Petitioners : Mr.Isaac Mohanlal,
Senior counsel
for Mr.T.Antony Arulraj

For Respondents : Mr.G.Prabhu Rajadurai
for Mr.P.Pethu Rajesh
(for R1 to R3)
No Appearance (for R4)

ORDER

By way of this Civil Revision Petition, petitioners assails an order of the Learned Principal District Munsif, Thoothukudi made in I.A.No.386 of 2018 in O.S.No.145 of 2018.

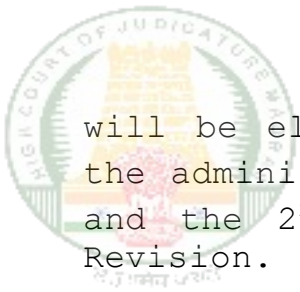
2.The facts required for the disposal of the present Civil Revision Petition is as follows:

The Respondents 1 to 3 herein have filed the above suit in O.S.No.148 of 2018 as against the Revision Petitioners and the other respondents herein seeking for the relief of declaration, declaration of a paper publication published with regard to conduct of a General Body and Executive Meeting on 05.05.2018 as null and void.

3.The respondents 1 to 3 further sought for permanent injunction vide plaint prayer clauses 'B' and 'C' respectively to restrain the 5th defendant from acting as an patron of the 1st Petitioner Society and for an injunction restraining the 2nd Petitioner from acting as the Secretary of the 1st Petitioner society. The Plaintiffs further sought for an appointment of Advocate Commissioner for conducting a free and fair election for 1st Petitioner Society.

4.According to the respondents 1 to 3, the 1st respondent society consists of two bodies on management side namely one the general body consists of 81 members and the executive consisting of 52 members.

5.The members of the General Body and Executive Committee are sponsored by 1st, 2nd and 3rd respondents as such they sponsor ten, one and two members respectively for the Election respectively. That apart another twenty members will be sponsored by the 2nd defendant in the suit namely Vadathisai Hindu Nadar Thoothukudi Mahamai Dharma Karapettai Paripalana Sangam and some other officials as Ex-officio members and four members sponsored by the 3rd defendant namely Thoothukodi Spinning Mills Ltd, thus totally 52 Executive Members. From amongst them a President, a Vice President, a Secretary, a joint Secretary and a Treasurer



will be elected as office bearers and they will be in charge of the administration. It would be note worthy that the 3rd defendant and the 2nd defendant are not before this Court in this Civil Revision.

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6.It is the case of the respondents 1 to 3 that the 2nd Petitioner and 5th respondent namely A.Rajendran and Katherasan, the defendants arrayed as 6th and 5th respectively in the main suit claiming themselves to be secretary and patron of the 1st Petitioner society have published the paper publication on 05.05.2018 calling for a general body and executive committee meeting as per their own whims and fancies by floating the bye-laws and election procedure of the 1st Petitioner society.

7.It is their case that the 2nd Petitioner who was an erstwhile secretary of the 1st respondent society originally elected for the period March 2012 to 23.03.2015 but till date by playing foul play acted as Secretary till 2017.

8.Originally the election dispute arise between the parties when the 2nd defendant in the suit required for time to submit the members list of their society proposed for General Body and Executive Committee for the year 2015 to 2018.

9.In the meantime a Suit in O.S.No.99 of 2015 on the file of the Learned Sub-ordinate Judge, Thoothukodi seeking for an injunction to restrain the 1st respondent society from conducting its general body and executive meeting to be held for election for the period 2015 to 2018 came to be filed two other members of the Society.

10.However, the then Vice-President of the 3rd respondent Mahamai herein recorded a resolution as if a general body was conducted on 21.03.2015 for the term 2015 to 2018. The said meeting held on 21.03.2015 was an eye wash and no time was given to the members for electing new office bearer and thereby without proper meeting a resolution was recorded by declaring one Mr.P.Ilango as President, Mr.G.Thivagar as Vice President, the 2nd petitioner herein as Secretary, Mr.J.Mohanraj as Joint Secretary and Mr. N. Karthikeyan as Treasurer.

11.As against the above illegality committed by the then Vice President in conducting the General Body and Executive Meeting, several objections were made before the District Registrar of Societies and as a result of same the Form 6 and 7 submitted for approval of the administrative Committee by the 2nd Petitioner came to be returned. Whereas in the meantime, the 2nd Petitioner was approved as Secretary of the College Education,



Chennai vide a proceeding dated 27.03.2015 of the Director of Collegiate Education. That apart a suit in O.S.No.21 of 2016 before District Munsif Court, Thoothukudi was filed by the 1st respondent society to declare the alleged election for the period of 2015 to 2018 as null and void.

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12.Again the 2nd Petitioner sent two notices dated 01.06.2017 calling for a General Body and Executive Committee meeting scheduled on 08.07.2017, therefore the 1st respondent filed a suit in O.S.No.195 of 2017 on the file of the District Munsif Court, Thoothukudi to declare the said notices as null and void and for an injunction restraining further proceedings.

13.In the meantime, the 2nd Petitioner's Secretaryship was extended till 30.06.2017 by the Director of Collegiate Education. Things being as such the Directorate of Collegiate Education passed an order dated 30.08.2017 stating that the tenure of the 2nd Petitioner had ended on 30.06.2017. Even then now the 2nd Petitioner claiming to be the Secretary of the 1st Petitioners society issued the paper publication calling for general body and executive meeting to be held on 05.05.2018. Therefore the respondents 1 to 3 filed the above suit for the relief stated supra.

14.In the said suit the respondents filed an interlocutory application seeking for an order of ad-interim injunction from proceeding with election process and the same was granted by the Trial Court vide an Order dated 26.04.2018. Aggrieved over the said order of injunction, the present Civil Revision Petition is being filed by the Petitioner society and the 2nd Petitioner.

15.I heard Mr.Isaac Mohanlal, learned senior counsel for Mr.T.Antony Arulraj, learned counsel for the Revision Petitioners and Mr.G.Prabhu Rajadurai for Mr.P.Pethu Rajesh, learned counsel for the respondents 1 to 3 and perused the entire materials available on record. No representation on behalf of the 4th respondent.

16.The learned Senior Counsel appearing for the revision petitioners would submit that the Learned Trial Judge failed to note that admittedly there was no any order of injunction against the officer bearers elected on 21.03.2015 and the suit referred by the respondents viz., O.S.No.79 of 2015 on the file of Thoothukudi was dismissed long back and the suit have no bearing over the Election for the period 2018 to 2021.

17.Thus the Election Schedule and the Venue for Election for the period 2018- 2021 were communication to all the Mahamais including the respondents and they have submitted their



representatives List on 31.03.2018, 10.04.2018 and 02.04.2018 respectively towards Election proposed to be conducted for the period 2018 to 2021. However, having forwarded the representatives, the respondents 1 to 3 have filed the above civil suit which is an abuse of process of law.

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18.The suit is liable to be dismissed out rightly for material suppression that forwarding of its members by the respondent societies have not been disclosed in the plaint or in the affidavit filed in support of the injunction application.

19.Thus the respondents who approached the court with unclean hands by suppressing material fact is not entitled to any relief. Earlier the District Registrar, (Societies) Thoothukudi cancelled the election took place on 21.03.2015 vide order dated 14.07.2016 and the same was challenged by way of a writ petition in W.P.(MD).No.13144 of 2016 before this Court and an order of interim stay was granted. Accordingly the election of the office bearers took place on 21.03.2015 is still holding good. On the other hand without even a prima facie case made out by respondents 1 to 3 the Learned Trial Judge has granted an Interim Injunction. The learned senior counsel appearing for the petitioners have attacked the interim injunction granted by the trial court that it was granted in a hasty manner, without affording sufficient opportunity to the petitioners to defend the injunction application. According to the learned senior counsel, the suit was filed on 24.04.2018 along with injunction application and the same was posted to next day i.e., on 25.04.2018 for counter and disposal and an order of injunction was granted on merits on 26.04.2018 and thus the trial court has committed a grave error in deciding the interim injunction application by not granting sufficient time. Further there would be no loss or hardship that the respondents 1 to 3 have already advanced their Member list. The civil suit in O.S.No.21 of 2016 and W.P.(MD).No.13144 of 2016 pertains to Election rivalry of the period 2015 to 2018, which had already lapsed. As the filing of suit itself is an abuse of process of law and therefore the petitioners by invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India has sought for interference with the Order of Injunction made by the Trial Court.

20.Per contra, the Learned Counsel for the respondents by way of reply had contended that the 2nd Petitioner and 5th respondent namely A.Rajendran and Kathiresan, the 6th and 5th defendants respectively claiming themselves to be secretary and patron of the 1st Petitioner society have published the paper publication on 05.05.2018 calling for a general body and executive committee meeting. The same is not in accordance with bye-law and the election procedure to be followed. The 2nd Petitioner was an erstwhile secretary of the 1st respondent society for the period



March 2012 to 23.03.2015 but till date by playing foul play acted as Secretary till 2017.

21.Originally the election dispute arise between the parties when the 2nd defendant in the suit required for time to submit the member list of their society proposed for General Body and Executive Committee for the year 2015 to 2018. Whereas despite a Suit in O.S.No.99 of 2015 on the file of the Learned Subordinate Judge, Thoothukudi pertaining to Election dispute for the period 2015 to 2018 was pending, besides pendency of some other writ petition regarding the Election process, without any proper meeting, a resolution was recorded by declaring one Mr. P.Ilango as President, Mr.G. Thivagar as Vice President, the 2nd petitioner herein as Secretary, Mr.J.Mohanraj as Joint Secretary and Mr. N. Karthikeyan as Treasurer.

22.The same was represented before the District Registrar (Society Registration) and hence the Form 6 and 7 submitted for approval of the Administrative Committee by the 2nd Petitioner came to be returned. Whereas in the meantime, the 2nd Petitioner was approved a Secretary of the College Education, Chennai vide a proceeding dated 27.03.2015 of the Director of collegiate education. That apart a suit in O.S.No.21 of 2016 before District Munsif Court Thoothukodi was filed by the 1st respondent society to declare the alleged election for the period of 2015 to 2018 as null and void.

23.In the said factual background the 2nd Petitioner sent two notices dated 01.06.2017 calling for a General Body and Executive Committee meeting scheduled on 08.07.2017, therefore the 1st respondent filed a suit in O.S.No.195 of 2017 on the file of the District Munsif Court, Thoothukudi to declare the said notices as null and void and for an injunction restraining further proceedings.

24.Finally the Directorate of Collegiate Education passed an order dated 30.08.2017 holding that the tenure of the 2nd Petitioner had ended on 30.06.2017. But still the 2nd Petitioner claiming to be the Secretary of the 1st Petitioners society issued the paper publication calling for general body and executive meeting to be held on 05.05.2018 and the same is highly arbitrary and illegal.

25.Hence the respondents 1 to 3 filed the above suit and taken an interlocutory application seeking for an injunction against the petitioners from proceeding with election process and the same was on proper appraisal of the above facts had was granted by the Trial Court vide an Order dated 26.04.2018 and the same do not warrant any interference.



26. Yet another contention of the respondents 1 to 3 is that the instant Civil Revision Petition is not maintainable, as only a Civil Miscellaneous Appeal will lie as against an Order of the allowing of an application for Injunction and hence prayed for dismissal of this Civil Revision Petition.

27. On hearing upon both the parties and perusal of the records, since question arise as to the very maintainability of the Civil Revision Petition under Article 227 of the Constitution of India, this Court before going into the actual grounds of attack over the impugned order, deems fit to deal with the scope and nature of the power of this Court to be exercised under Article 227 of the Constitution of India and the warranting circumstance to invoke such power.

28. In as much as the circumstances demanding the exercise of the powers under Article 227, this Court likes to cite the following decisions of this Court in the matter of

(I) Southern and Rajamani Transport Private Limited v. R. Srinivasan, reported in 2010 (4) CTC. 690 having considered the power of this Court exercisable under Article 227 of the Constitution of India, has precisely held that the supervisory power has to be invoked to prevent miscarriage of justice and grave injustice to a party, besides preventing abuse of process of law. Further it was held that such power is in addition to the revisional jurisdiction.

(II) Ganapathy Subramanian v. S. Ramalingam and others reported in (2007) 7 MLJ 13, this Court has held that only wrong decisions may not be a ground for the exercise of jurisdiction under Article 227 of the Constitution of India, unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the Subordinate Courts and Tribunals resulting in grave injustice to a party.

Again in this regard it would be useful to look into the decisions of the Hon'ble Apex Court in the matter of

(III) Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675, holding as following that

"22. ... It is well settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in ~~the exercise of superintendence~~ the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. Else the parameters

invoking the exercise of power are almost similar.

25. ... In exercise of supervisory jurisdiction, the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, maybe, by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suomotu as well."

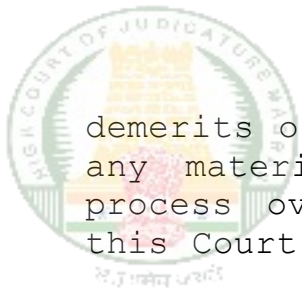
(IV) Kishore Kumar Khaitan and Anr. v. Praveen Kumar singh, reported in A.I.R.2006 SUPREME COURT 1474 holding that that the jurisdiction under Article 227 of the Constitution of India though may be restrictive in the sense that it is to be invoked only to correct the errors of jurisdiction, but when a Court approaches the question or issue in an improper manner and comes to a finding of fact, even such the said finding of fact will still be amenable for correction under Article 227 of the Constitution of India.

29.From the above decisions it is needless to say that the power under Article 227 of the Constitution is to be used sparingly in appropriate cases for the purpose of keeping the Subordinate Courts and tribunals within the bounds of their authority with regularity and orderliness of the proceedings of the Court and to prevent miscarriage of justice and grave injustice to a party, besides preventing abuse of process of law.

30.Again it would be useful to state that an application under Article 227 may be made by either parties to the suit or by Suo moto by this Court, the only point is to see as to whether there is any serious prejudice caused to the applicant in the conduct of suit or application by the proceedings of a Court below, demanding this Court to exercise its supervisory jurisdiction.

31.Moreso, this Court is mindful that in an application under Article 227 of the Constitution of India, this Court is not an Appellate Court where the facts and merits of the case can be gone through and the findings of the Lower Court can be testified or varied.

32.It is also equally important to state that this Court is <https://hccservices.gov.in/hccservices> that an Order of Injunction alike the impugned order herein or an order of refusal of Injunction is appealable under Order 43, Rule 1(r) CPC, hence without going into merits or



demerits of the case, this Court limits as to see whether there is any material irregularity or infirmity in the decision making process over the impugned Order by the Trial Court, warranting this Court to exercise its Supervisory power.

33. When a question was posed at the Learned Senior Counsel for the Revision Petitioners in this aspect, attention of this Court was drawn to an endorsement made by the Learned Senior Counsel for the petitioners in the Memorandum of Grounds in this Civil Revision Petition to the effect that filing of the suit in the aforesaid circumstances itself is an abuse of process of Law and that the suit was found filed on 24.04.2018 and the same was adjourned to 25.04.2018 for filing of Counter and disposal of the petition and that the I.A was disposed by the impugned order in the very next day i.e on 26.04.2018. Thus it is his contention that no sufficient time or opportunity was given to the revision petitioners to submit their case in full and that the revision petitioners were forced by the Court below.

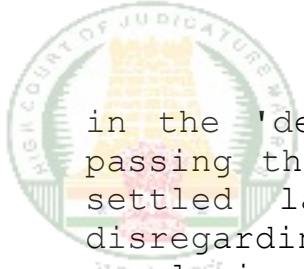
34. On perusal of the case records, this Court find that the proceedings of the subject Interlocutory application was posted for filing counter and disposal to the very next day of the first hearing and then the final order is being passed in the succeeding day. In my view such hurried procedure adopted by the Trial Court is arbitrary and unjustified in a case involving a bulk of material facts, affirmed and denied by either side and accordingly I find much force in the contention of the Learned Counsel for the Revision petitioner.

35. It is made clear that the above observation by this Court is exclusively confined to the hasty approach of the Court below in fixing the Hearing date and disposal of the respondents' application without giving reasonable time and opportunity to the revision petitioners and the same in any way cannot be termed or attributed as a feature of Bias as against the Learned Trial Judge.

36. At this juncture, this Court would like to say that a **Justice Hurried Is Justice Buried**. A reasonable and moreover proper time is to be given to the parties to a lis to effectively come up with their case and elucidate the Court with actual facts and circumstances involved in the case, enabling the Court to come to an appropriate decision.

37. For the foregoing reasons, I hold that the present Civil Revision Petition is maintainable and it is a fit case to exercise Supervisory powers of this Court to ensure fair hearing in compliance with the Principles of Natural Justice and to prevent gross injustice to the revision petitioner.

38. Thus this Court finds patent infirmity and irregularity



in the 'decision-making process' followed by the Court below in passing the impugned Order and as a consequence in line with the settled law that if such 'decision-making process' involves disregarding of vital evidence and arriving at erroneous conclusion, the power under Article 227 of the Constitution of India is to be invoked to prevent gross injustice to the party and to set right such errors to redress the party as against gross violation of natural justice, this Court deems fit to allow the Civil Revision Petition invoking the supervisory power conferred upon to this Court by setting aside the impugned Order.

39. In the result:

(a) this Civil Revision Petition is allowed by setting aside the order passed in I.A.No.386 of 2018 in O.S.No.145 of 2018, dated 26.04.2018, on the file of the learned Principal District Munsif, Thoothukudi;

(b) the petitioners are at liberty to convene the General body and the Executive Committee Meeting within a period of one month from the date of receipt of a copy of this order. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar (CS-I)

To

The Principal District Munsif,
Thoothukudi.

+1cc to Mr.T.Antony Arulraj, Advocate SR.No.79996

+2cc to Mr.P.Pethu Rajesh, Advocate SR.No.80089

Vsv

MK/RSK/SAR 1/29.08.2018/10P/5C

order made in
C.R.P. (MD) (PD) No.1084 of 2018
and
C.M.P. (MD) No.4717 of 2018
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