



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.08.2018

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP(MD)No.1796 of 2018 (PD)
and
CMP(MD)No.7854 of 2018

A.S.Ansar

... Petitioner

Vs.

1. A.K.Abdul Kareem
for himself and on behalf of the
members of the MAJILIS UL ULAMA,
a registered society having office at
Khaja Nagar, Trichirappalli.

2. A.Niaz Ahamed

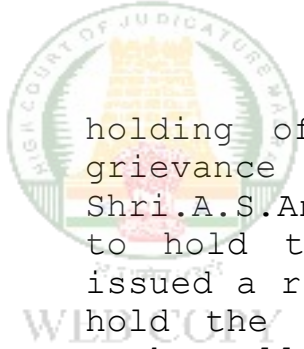
... Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 10.08.2018 passed in I.A.No.742 of 2018 in OS No.748 of 2018 on the file of the III Additional District Munsif, Tiruchirappalli.

For Petitioner : Mr.T.V.Ramanujam, Senior Counsel
for Mr.M.Saravanan
For respondents : Mr.M.Vallinayagam, Senior Counsel
for Mr.K.Sathiskumar for R1

O R D E R

The first respondent in this Civil Revision Petition filed O.S No.748 of 2018 on the file of the III Additional District Munsif Court, Tiruchirappalli seeking the relief of declaration and permanent injunction. The subject matter of the suit pertained to the affairs of a registered society by name Majilis-Ul-Ulama. The said society is running schools, a Kalyana Mandapam and an Orphanage. There are two groups vying for the control and the management of the society. One is led by Shri.A.Niyaz Ahamad and the other by Shri.A.S.Ansar. It appears that both conducted rival elections for the Triennium 2015-2018 and declared themselves elected as General Secretary. Suits were instituted on either side for finality is yet to be arrived at as regards who is in possession and management. Now, the issue is with regard to



holding of the elections for the triennium 2018-2021. The grievance of the first respondent is that while the group led by Shri.A.S.Ansar issued a notification dated 28.07.2018 proposing to hold the election on 19.08.2018, the other group has also issued a rival election notification dated 03.08.2018 proposing to hold the election on 26.08.2018. The first respondent herein seeks nullification of both the election notifications. The court below had granted an exparte interim order of status quo on 10.08.2018 in I.A.No.742 of 2018 in O.S No.748 of 2018. The said order reads as under :

"Heard Petitioner. Affidavit perused. The suit is filed for declaration that the election notification dated 28.07.2018 is illegal, void ab-initio and unenforceable and for permanent injunction restraining the 2nd defendant from conducting election for the 1st defendant society for the Triennium 2018-2021 either on 19.08.2018 or any other adjourned date and for declaration that notification dated 03.08.2018 is illegal null and void and for permanent injunction restraining the 1st defendant from conducting the election on 26.08.2018 and other dates. The plaintiff has filed the suit to safe guard the interest of the society and other related institutions. On perusal of records and documents it is found that there are number of cases pending regarding the election of defendant society. Hence in the interest of justice, status quo to be maintained till 28.08.2018."

2. Questioning the validity of the said order dated 10.08.2018, this Civil Revision Petition has been filed invoking the jurisdiction of this Court under Article 227 of the Constitution of India. The learned Senior Counsel appearing for the revision petitioner contended that a mere reading of the impugned order would on the very face of it show that the procedure laid down in Order 39 Rule 1 to 3 of Civil Procedure Code has not been complied with. It is virtually non speaking. The reason that has been set out is no reason at all. An interim order of injunction can be granted only after the Court has satisfied itself as regards the prima facie case, irreparable injury and balance of convenience. There is nothing on record to show that the court below had satisfied itself on these three counts.

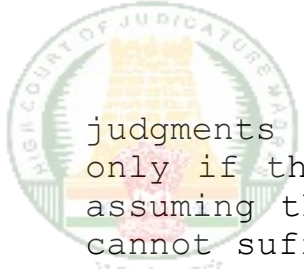
3. He also alleged that in this case, there has been forum shopping. OS No.600 of 2018 had already been filed before the First Additional Sub Court, Tiruchirappalli in a representative capacity and in the said case, both the present defendants have been shown as D1 and D2. This was followed by the institution of OS No.629 of 2018 on the file of the Principal District Munsif Court, Tiruchirappalli. Thereafter, one more suit in OS No.721



of 2018 was filed before the Principal District Munsif Court, Tiruchirappalli in which the election notification dated 28.07.2018 has been challenged. The first respondent who is the present plaintiff was shown as the 5th defendant in the said suit.

4. The learned Senior Counsel for the petitioner would specifically point out that in OS No.721 of 2018 no interim order was granted. Therefore, the present suit came to be engineered. The first respondent herein filed OS No.748 of 2018 as an ordinary suit on 07.08.2018. After it was assigned to the III Additional District Munsif Court, Tiruchirappalli, I.A No.742 of 2018 was filed for restraining the revision petitioner from conducting the election on 19.08.2018 or on any other adjourned date to elect office bearers for the suit society for the triennium 2018-21. On the same day, the impugned interim order was granted on an ex parte basis. The learned Senior counsel for the petitioner would seriously question the very bonafides of the first respondent in instituting the said suit. Placing reliance on the decision of the Hon'ble Supreme Court reported in **(1996) 3 SCC 416 (Boddula Krishnaiah vs. State Election Commissioner, A.P) and (2011) 13 SCC 774 (Supreme Court Bar Association vs. B.D.Kaushik)**, he contended that when once the election process had set in, it should not be interfered with by means of an interim order of injunction. The court below has not even recorded the reasons for grant of ex parte order of injunction. The revision petitioner, therefore, has the right to move this Court invoking its jurisdiction under Article 227 of the Constitution of India notwithstanding the availability of the alternate remedies such as applying for vacating the interim order or filing a Civil Miscellaneous Appeal. In this regard, he referred to the decisions reported in **2000 (II) CTC 235 (Andhra Social & Cultural Association v. R.Karuppan)** and **2010 (5) CTC 762 (Indian Evangelical Lutheran Church vs. J.Rajesh)**.

5. In response thereto, the learned Senior Counsel appearing for the first respondent contended that the impugned order cannot be characterised as a non speaking one. He strongly denied the personal allegation made against the plaintiff/first respondent. The only concern of the first respondent is that the last three years had been spent in conducting wasteful litigation which had sapped the energy of the Society. The situation must be set right atleast now. Since there are two rival notifications, the general principle that there cannot be an interference with the election process once it has commenced will not apply. It is an undeniable fact that a number of cases are pending. There are rival claims. In these circumstances, the court below was justified in granting an order of status quo. In any event, the present Civil Revision Petition filed under Article 227 of the Constitution of India is not maintainable. He further contended that the litigants do not have any control over the manner in which the



judgments and orders are drafted. What this Court should see is only if there has been any application of mind. Therefore, even assuming that there has been a procedural fault or two, the party cannot suffer for the lapse committed by the Court. In this case, this Court should proceed as if there has been an implied or deemed compliance of the requirements of Order 39 Rule 1 to 3 of CPC.

6.The learned Senior Counsel for the first respondent took this Court through the decisions reported in **2012 8 MLJ 19 (Tamil Nadu Mercantile Branch Ltd., vs. S.Murugesan & Others)**, **2013 (6) MLJ 123 (Most Rev.G.Devakadasham Moderator Church of South India Synod v. Danied Diwakar)** and **AIR 2000 SC 3032 (A.Venkatasubbiah Naidu v. S.Chellappan)** in support of the various propositions advanced by him. He also wanted this Court to follow the approach adopted by a learned Judge of this Court while disposing of CRP (NPD) (MD)No.1095 of 2014 on 13.08.2014.

7.This Court carefully considered the rival contentions. The election in question is to be held on 19.08.2018. The election notification was issued on 28.07.2018. It is not in dispute that the election process has already commenced. In 1952 itself, the Hon'ble Supreme Court in the decision reported in **AIR 1952 SC 64 (N.P.Ponnuswamy vs. Returning Officer, Namakkal Constituency)** authoritatively laid down that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over so that the election proceedings may not be unduly retarded or protracted.

8.But then, a learned Judge of the Madras High Court in the decision reported in **(2001) 3 CTC 486 (R.Karuppan v. P.K.Rajagopal)** held as under :

"17.Point No. 3: The second defendant argued that once election has started, it cannot be stalled by the Courts. This argument is based upon the procedures and practices as well as the rules of the Representation of the Peoples Act which govern the general elections. He argued that just like the process of general elections of Parliament or the State Legislative Assembly cannot be stalled or stopped by any proceedings before the Court, the election to the association also cannot be stalled. This argument of the second defendant is not acceptable. The General Election for Parliament and the State Legislative Assemblies are governed by the Representation of the Peoples Act and Rules. It cannot be extended to the Association registered under the Societies Registration Act. These associations are undoubtedly governed only by the



Societies Registration Act and rules and nothing else. Therefore, in the absence of any provision excluding the jurisdiction of Courts, this argument is not acceptable and hence, rejected."

This was followed in quite a few decisions such as the ones reported in **(2010) 2 MWN (Civil) 696 (Food Corporation of India vs. J. Shanmugam)** and **(2015) 5 CTC 45 (Tim Boyd v. Kesiraju Krishna Phani)**. In fact, it was cited with approval by the Hon'ble Division Bench in **K. Gnanaprakasam vs The Food Corporation Of India (2013) 2 MLJ 159 (D.B)**.

9. But, without referring to Karuppan case, the Hon'ble First Bench in the decision reported in **2014 (2) LW 838 (Medical Council of India vs. Registrar/Returning Officer)** held that it is well settled that once the election process commenced, the same cannot be stayed by the Courts. The Hon'ble First Bench followed the decisions of the Apex Court reported in **(2011) 13 SCC 774 (Supreme Court Bar Association vs. B.D. Kaushik)** and **(2001) 8 SCC 509, (Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Another v. State of Maharashtra)**. The Hon'ble Division Bench of the Delhi High Court also in the decision reported in **ILR (2013) 5 Del 3539 (Yachting Association of India v. Boardsailing Association of India)** noted that the principles of law relating to election of candidates under the Representation of People Act, 1951 have been extended to elections in general also. In the case of Shri Sant Sadguru, (2001) 8 SCC 509, the Supreme Court was considering a case of elections to the Managing Committee of a society registered under the Maharashtra Cooperative Societies Act, 1960. B.D. Kaushik case concerned not an election to a legislature or a local body but only to a Bar association.

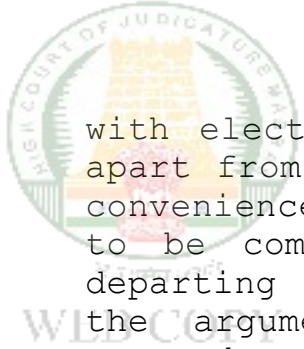
10. However, it must be said to the credit of the learned Senior Counsel Shri. Vallinayagam that he fairly conceded the applicability of the principle of non intervention laid down in N.P. Ponnuswamy's case even to registered societies, associations and other private bodies. His submission was that in almost all the reported decisions, the ratio has been laid down to the effect that after the commencement of the election process, the courts shall not ordinarily intervene. He laid emphasis on the expression "ordinarily". In other words, in exceptional cases, judicial intervention is not only possible but also warranted. He placed reliance on the decision of the Hon'ble Supreme Court reported in **2006 AIR SCW 4670 (Jayrajibhai Jayantibhai Patel v. Anibhai Jayantibhai Patel and others)** and the Full Bench decision of the Madras High Court reported in **2007 (1) CTC 705 (All India Anna Dravida Munnetra Kazhagam vs. State Election Commissioner)**.



11. In both the cases referred to by the learned Senior Counsel, the courts intervened after the voting process was already over. What was overruled was the objection that the parties must be relegated to avail the remedy of filing the election petition. The Hon'ble Supreme Court in the decision reported in **2006 AIR SCW 4670** was concerned with the case of election of president of a municipality. The president is elected by the councillors. Few minutes before the election meeting, two of the councillors were detained by the police. The presiding officer was aware of this development. But, he continued with the election process. In these circumstances, the Hon'ble Supreme Court intervened and held that the decision was perverse, irrational and set aside the election and directed that it would be held afresh.

12. Likewise, the local body elections held in the year 2006 in Chennai witnessed massive violence, rigging and booth capturing. This was challenged by a opposition political party. The maintainability of the writ petition was questioned on the ground that only remedy open to the aggrieved parties was to file an election petition. There was a split verdict which necessitated reference to a 3rd Judge. The learned Judge - The Hon'ble Mr. Justice P.K. Misra - (we use the expression "learned" as a matter of convention but Justice P.K. Misra who served this institution was truly learned and distinguished in every sense of the term) held that the materials on record clearly substantiated the allegations made by the writ petitioners. The learned Judge directed the election commission to hold fresh elections in respect of a certain number of wards. Instead of relegating the parties to file an election petition for setting aside the election, relief was granted in exercise of the jurisdiction under Article 226 of the Constitution of India. But then, in both the cases relied upon by the learned Senior Counsel for the plaintiff/first respondent the situation was truly extra ordinary. The courts referred at length to the exceptional facts obtaining in those cases and thereafter, granted relief.

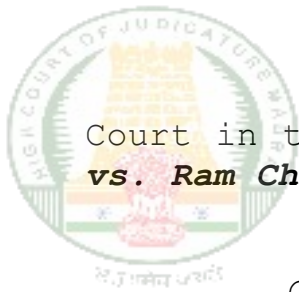
13. It is true that such a hands off approach was laid down when we were a young republic and the democratic process was pristine. That is no longer the case any more. Even in the Sixties, the great Rajaji wrote a collection of essays titled "Rescue Democracy from Money Power". The Hon'ble Supreme Court is taking steps to check criminalisation of politics. Thirumangalam and R.K. Nagar refer not only to places but also to particular electoral strategies. Voting is turning out to be a bidding process. Courts can no longer afford to remain content by whistling old tunes. May be the time has come to devise an appropriate juridical response. But then the court must record its prima facie finding that an exceptional situation is prevalent which demands an exceptional response. When courts are concerned



with election matters and some interim relief is to be granted, apart from the usual triple tests of prima facie case, balance of convenience and irreparable injury, there is a fourth requirement to be complied with. The court must record the reasons for departing from the standard "hands off" approach. Even going by the arguments of the learned Senior Counsel for the first respondent only in an extra ordinary case, the principle of non intervention could be departed from. Admittedly, the Trial Court has not shown as to why an exception should be made in this case.

14. The learned Senior Counsel appearing for the respondent claimed that the plaintiff cannot dictate the manner in which the order is to be drafted. He therefore wanted this Court to hold that the impugned order can be deemed to contain the requirements set out above atleast by implication even if they are not stated in so many words. He placed reliance on the decision of the Hon'ble Supreme Court reported in **AIR 2000 SC 3032 (A.Venkatasubbiah Naidu v. S.Chellappan)**. I am unable to agree with this submission. But, what is to be so read by implication?. When the court grants an exparte interim injunction, the applicant is required to perform the duties enumerated in Clauses (a) and (b) of Rule 3 of Order 39 of CPC. Even if the order granting exparte injunction does not call upon the applicant to do so, still the party in whose favour the exparte order was made is obliged to comply with the duties which he has to perform as mandated by the statute. If he does not do so, he will be visited with certain consequences. In other words, even if the order granting injunction does not call upon the applicant to do the duties set out in Clauses (a) and (b) of Rule 3 of Order 39, still he is bound to do so. Only to this extent, there can be an implication even if the injunction order is silent. Beyond this, there cannot be any deeming effect. If the court below does not record its satisfaction that the triple tests are fulfilled while granting an interim order, this Court cannot assume that only because the court below was satisfied as regards the entitlement of the party to an interim injunction, it granted interim relief. Only if the triple tests are satisfied, an injunction can be granted. From the fact that injunction was granted, we cannot infer that the triple tests must be deemed to have been satisfied. That would be an inversion of logic. The reasoning process must perforce be linear. Nothing akin to reverse osmosis can be adopted by me to sustain the impugned order. To reiterate, what can be implied is only the procedural duty of the litigant to effect service and not the substantive satisfaction of the court.

15. The learned Senior Counsel for the first respondent would strongly maintain that in any event this Civil Revision Petition is not maintainable. I am unable to agree. The Hon'ble Supreme

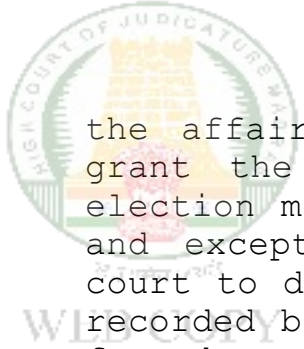


Court in the decision reported in **(2003) 6 SCC 675 (Surya Dev Rai vs. Ram Chander Rai and others)** held as follows :

"Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

16. Of course, **Surya Dev Rai** was overruled in **Radhey Shyyam vs. Chhabi Nath (2015) 5 SCC 423** but only to a limited extent. In **Surya Dev Rai**, the Hon'ble Supreme Court held that even judicial orders of subordinate courts are amenable to correction in exercise of jurisdiction under Article 226 of the Constitution of India. But, the three Judges Bench in **Radhey Shyyam** case, held that writ petitions would not lie against judicial orders. In all other respects, **Surya Dev Rai** was not touched. Therefore, it would not be correct to contend that a Civil Revision Petition is not maintainable against an exparte interim order passed by the court below. Of course, this jurisdiction is to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised. This note sounded by the Hon'ble Supreme Court in **Surya Dev Rai** is like the "flashing yellow light" at a traffic signal. You can drive through, but you should reduce your speed a little bit and be cautious as you cross the intersection.

17. Bearing this in mind, I am convinced that the order impugned in this Civil Revision Petition has to be set aside. To recapitulate, in respect of the very same subject matter more than one suit had already been filed and interim orders had not been granted in those cases. The first respondent filed the present suit as an ordinary suit on 07.08.2018 and not as an emergent one. Three days after the filing of the suit ie., on 10.08.2018, interim application for restraining the revision petitioner from holding the election was taken out and on the same day exparte interim injunction was granted. The elections were to be held on 19.08.2018. Therefore, the court below could have issued at least a short notice. No reason has been recorded as to why exparte order has to be made. That apart, the triple tests of prima facie case, balance of convenience and irreparable injury have not been shown to have been satisfied. The only reason set out in the impugned order, namely, that number of cases concerning



the affairs of the society are pending, cannot be a ground to grant the injunction sought for. As already pointed out in election matters, there is one other requirement. Extra ordinary and exceptional circumstances must be prevailing impelling the court to depart from the standard norm. No such finding has been recorded by the court below. The learned Senior Counsel appearing for the respondent submitted that in this case in view of two rival notifications holding the field, the court below was justified in passing the impugned order of status quo. If mere issuance of a rival notification can be a justification for the court to step in, then any election process can be frustrated by adopting a similar tactics. In any event, this is only a submission of the learned Senior Counsel and not the reason reflected in the impugned order.

18. The impugned order is virtually non speaking. A Judge dealing with an application for injunction must exhibit awareness of the tests to be satisfied by the applicant and record the findings under each head. This alone will ensure that the decision-making occurs thoroughly and lawfully and that the decision-maker's mind is focussed. The decision-maker needs to be disciplined in addressing questions, not just arriving at answers (Administrative Law by Mark Elliott and Jason N.E.Varuhas - Fifth Edition).

19. The Hon'ble Supreme Court in the decision reported in **(2006) 3 SCC 312 (Kishore Kumar Khaitan v. Praveen Kumar Singh)** held that when a court asks itself a wrong question or approaches the question in an improper manner, even if it comes to a finding of fact, the said finding of fact cannot be said to be one rendered with jurisdiction and it will still be amenable to correction at the hands of the High Court under Article 227 of the Constitution of India. The failure to render the necessary findings to support its order would also be a jurisdictional error liable to correction. In this case, the court below has failed to render the necessary findings to support its order.

20. I hold that in this case there is a jurisdictional error which warrants correction in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. The court below acted improperly in passing the impugned order. The order impugned in this Civil Revision Petition is set aside. This Civil Revision Petition is allowed. But, merely because the CRP has been allowed, this Court should not be understood as having stated that the notification issued by the revision petitioner on 28.07.2018 is valid and that the rival notification issued on 02.08.2018 is invalid. This Court has not pronounced on the authority and competence of the rival parties to issue the respective notifications. It is for the aggrieved parties to



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thrash out these issues later. There would be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-III)

To

The III Additional District Munsif,
Tiruchirappalli.

- + 1 CC TO Mr.M.SARAVANAN, ADVOCATE IN SR No. 79023
- + 1 CC TO Mr.K.SATHISH KUMAR, ADVOCATE IN SR No. 79195
- + 1 CC TO Mr.P.ARUN JAYATRAM, ADVOCATE IN SR No. 79225

SKM

TE/RSK/SAR-2 : 23/08/2018 : 10P/5C

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