

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 13.06.2019	Delivered on 28.06.2019
---	--

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Application No.1775 of 2019
in CS No.126 of 2019

Tamil Nadu Football Association,
73, Jawaharlal Nehru Stadium,
Park Town, Chennai 600 003.

... Applicant

Vs

1. Pennar Senior FC
Rep. By its Secretary Mr.K.Tamilselvan
Pudur Village, Malaiyandhalli Post,
Kaveripattinam,
Krishnagiri District 635 112.
2. Intermillan FC
Rep. By its President Mr.K.R.Murali
Vivek Garden, Hosur,
Krishnagiri District 635 109.
3. Krishnagiri Town FC
Rep.by its Secretary Mr.V.K.Murali
2/233, Priya House,
Chennai By-pass Road,
Krishnagiri District 635 001.
4. St.Antony's FC
Rep. By its Secretary Mr.E.Arockiaraj
220/B, KTM Nagar, Elathagiri Post,
Bargur Taluk,
Krishnagiri District 635 108.
5. Dynamo FC
Rep. By its Secretary Mr.P.K.Balu,
31/40E, Royakottai Road,
Opp. Srinivasa Theatre,
Hosur, Krishnagiri District 635 109.
6. Trinity FC
Rep. By its Secretary Mr.N.Deepraj
2/136A, Pethathalapalli Village and Post,
Krishnagiri District 635 001.

7. Hosur Town FC
Rep. By its Secretary Mr.K.Venkatesh
42, Nehru Nagar, Opp. Railway Station,
Hosur, Krishnagiri District 635 109.
8. Maharishi Vidhya Mandir FC
Rep. By its Secretary Mr.M.Shankar
5/39, Dasarpet, Hosur,
Krishnagiri District 635 109.
9. MGR College FC
Rep. By its Secretary Mr.R.Jothibas
MGR College, Hosur,
Krishnagiri District 635 109.
10. Government Boys Higher Secondary School FC
Rep. By its Secretary Mr.Alphones Albert,
4/213, -4, Sanjeev Nagar,
Ponmalaikoil Street, Kottiganapali,
Krishnagiri District 635 001.
11. Pennar Junior FC
Rep. By its Secretary Mr.C.Sasikumar
3/210 A, ARS Nagar, Kaveripaatinam,
Krishnagiri District 635 112.
12. Krishnagiri District Football Association,
Rep. By its Secretary Mr.C.Sasikumar,
32, Bharathiyar Street, Newpet,
Krishnagiri 635 001.
13. Government of Tamil Nadu,
Rep. By it's the Secretary,
Commercial Taxes and Registration Department,
Namakkal Kavignar Maligai,
Fort St. George, Chennai 600 009.
14. The Registrar of Societies,
District Registrar Office Central Chennai,
268, Bharathisalai, Express Estate,
Royapettah, Chennai 600 014.
15. Inspector General of Registration,
100 Santhome High Road,
Mylapore, Chennai 600 028. ... Respondents

Prayers: Application is filed under Order XIV Rule 8 of the
Original Side Rules read with Section 151 of the Code of
<https://hcservices.ecourts.gov.in/hcservices/>
Civil Procedure, praying to refer the parties to

Arbitration as per Section 8 of the Arbitration and Conciliation, Act 1996 in terms of Article 66 of the Tamilnadu Foot Ball Association Constitution and Article 46 of the District Football Association Statutes.

For Applicant : Mr.S.V.Jayaraman, SC
for M/s.J.Arul Prakasam

For Respondents: Mr. N.L.Rajah, SC
for M/s.K.Seshasayee

ORDER

This application has been filed under Section 8 of the Arbitration and Conciliation Act, 1996, seeking to refer the suit for Arbitration in terms of Articles 66, 67 and 68 of the Statutes of the Applicant-Association and Section 46 of the Statutes of the District Foot Ball Association.

2. The suit in CS No.126 of 2019 has been filed by 12th Foot Ball Clubs functioning in Krishnagiri Disrict, seeking the following prayers: सत्यमेव जयते

(a) To declare the notices dated 07.01.2019 and 22.01.2019 issued by the 4th defendant for convening the 83rd Annual Ordinary Congress to be held on 09.02.2019 at Hotel Green Palace, SNM Green City, Vilar, Trichy - Nagai Express way, Thanjavur 613 006 as null and void;

(b) For a permanent injunction restraining the office bearers of the 4th defendant from

discharging official functions as office bearers;

(c) To declare all the actions, decisions, letters and emails of the 4th defendant from 20.09.2018 as null and void;

(d) For a permanent injunction restraining the 4th defendant from conducting Annual Ordinary Congress to be held on 09.02.2019 at Hotel Green Palace, SNM Green City, Vilar, Trichy - Nagai Express way, Thanjavur 613 006;

(e) To declare the voting rights of the 12th plaintiff through its office bearers elected on 28.12.2018 as valid.

3. Pending the said suit, the plaintiff had also sought for injunction restraining the defendants for convening the 83rd Annual Ordinary Congress at Hotel Green Palace, SNM Green City, Vilar, Trichy - Nagai Express way, Thanjavur 613 006, on 09.02.2019, by an order dated 08.02.2019, this Court had granted interim injunction. While the plaintiffs/applicants have filed an Application No.1554 of 2019 claiming that the order of injunction dated 08.02.2019 was willfully disobeyed, the respondents/defendants have come forward with an Application No.1774 of 2019 seeking to vacate the injunction and Application No.1775 of 2019 seeking to refer the matter for Arbitration under Section 8.

<https://hcservices.ecourts.gov.in/hcservices/>

Since the disposal of the application under Section 8 would have a bearing on the jurisdiction of this Court to proceed

with the suit and the other applications I had heard the application under Section 8 first.

4. According to the applicant, the statutes of the applicant Association as well as the statutes of the District Foot Ball Association provide for Arbitration by a panel of Arbitrators. In view of the same, the suit has to be referred to Arbitration. Articles 66, 67 and 68 of the statutes of the Tamil Nadu Football Association read as follows:

Article 66 Arbitration Tribunal

- 66.1. Tamilnadu Football Association shall create an option for recourse to Arbitration, by nominating a panel of independent arbitrators who may be advocate or Magistrate to resolve any disputes between Tamilnadu Football Association its members, clubs, players, officials and all those involved in the Game of Association Football. The Arbitration Tribunal will only deal with the internal disputes that do not fall in the jurisdiction of the order two judicial bodies of Tamilnadu Football Association.
- 66.2. With regard to substance, the arbitrators shall be guided and apply the various regulations of Tamilnadu Football Association and All India Football Federation and the Indian Law.
- 66.3 The Arbitration procedure shall be according to the special regulations made for this purpose.

Article 67 Jurisdiction of Arbitrators

- 67.1. Only the Arbitrators shall deal with appeals

against decisions and disciplinary sanctions of the last instance, after all previous stages of appeal available at Tamilnadu Football Association, Member, Club level have been exhausted. The reference to arbitrators shall be sought by an application made to the Tamilnadu Football Association Secretariat within 10 days of notification of the decision.

- 67.2 The Arbitrators shall not, however, hear appeal on:
 - a) Violation of the Laws of the Game.
 - b) Suspension of up to one year
 - c) Decisions passed by an independent and duly constituted Arbitration Tribunal of a Member.
 - d) Decisions of Disciplinary and Appeal Committee.
- 67.3. The Arbitrators are also empowered to deal withal disputes between a third party and any entities or person mentioned in par-1 if an arbitration agreement exists.

Article 68 Obligations

- 68.1. The members, Clubs, Leagues and all other natural or legal persons affiliated to them, shall agree to recognize the Arbitrators appointed by Tamilnadu Football Association as independent Judicial Authority and to ensure that their members, affiliated players and officials comply with the decisions passed by the arbitrators. The same obligation shall apply to licensed match and player's agents.
- 68.2. Re-course to ordinary Courts to Law is prohibited unless specially provided for in the Federation Internationale de Football Association, All India Football Federation and Tamilnadu Football Association Regulations.
- 68.3. To ensue the foregoing, the Members shall

insert a clause in their Statutes stipulating that their Clubs and Members Voluntarily agree not to take dispute(s) to Courts of Law and are required to submit any disagreement to the jurisdiction of the Tamilnadu Football Association.

- 68.4. The Members, Clubs, League, Players, Officials, Players' agent and all other natural or legal persons affiliated to them, shall agree to recognize the Court of Arbitration for Sports (CAS) as independent judicial Authority and to ensure that their Members, officials, players, and officials comply with the decision passed by Federation Internationale de Football Association or Court of Arbitration for Sports. The same obligation shall apply to licensed match and players agents.

Article 46 of the statutes of the District Football Association, read as follows:

Article 46 Arbitration

- 46.1 The Tamilnadu Football Association shall create an option for recourse to arbitration by nominating a panel of independent arbitrators to resolve any dispute that may arise between Tamilnadu Football Association, its members, clubs, players, officials and all those involved in the game of Association Football.
- 46.2 The Arbitration Tribunal will only deal with internal disputes that do not fall under the jurisdiction of other two judicial bodies of Tamilnadu Football Association i.e. Disciplinary and Appeals Committee.

<https://hcservices.ecourts.gov.in/hcservices/> ● 46.3 With regard to the substance the arbitrators shall be guided to apply the various regulations

of Tamilnadu Football Association, All India Football Federation, Asian Football Confederation and Federation Internationale de Football Association and the Indian Law.

- 46.4 The Arbitration procedure shall be according to the Special Regulations made for this purpose.
- 46.5 The Arbitrations shall only deal with the appeals against decisions and sanctions of the last instance after all previous stages of appeal available at the levels of Club, District Football Association and Tamilnadu Football Association have been exhausted.
- 46.6 The Reference to Arbitrators shall be sought by an application made to the Secretariat of Tamilnadu Football Association within 10 days of the notification of the Decision.
- 46.7 The Arbitrators shall not however hear appeals on;
 - a) violations of the Laws of the Game
 - b) Suspension of up to four matches or up to six months in the case of players,
 - c) Suspension of officials, coaches, Referees up to a period of one year
 - d) Decisions passed by an independent and duly constituted arbitration Tribunal of a member.
 - e) Decisions of Disciplinary and Appeal Committees of Tamilnadu Football Association.
- 46.8 The Member Clubs, Players, Coaches, Referees and Officials shall agree to recognize the arbitrators appointed by Tamilnadu Football Association as independent judicial authority and to comply with the decisions passed by them.
- 46.9 Recourse to Ordinary Courts of Law is prohibited unless specifically provided for in the regulations of Tamilnadu Football Association.

5. The primary contention of the applicant is that in view of the provisions in the statutes which provide for Arbitration of the dispute between the Tamil Nadu Football Association, its members, clubs, players, officials, the suit itself cannot be proceeded with and has to be referred to Arbitration under Section 8 of the Arbitration and Conciliation Act. Of course certain pleadings about suppression of the proceedings in a Writ Petition have been set out in the affidavit filed in support of this application, I do not propose to go into the same as they are beyond the scope of this application under Section 8.

6. The respondents/plaintiffs would resist the application contending that the Arbitration Clause itself will not apply, inasmuch as, the applicant Association had not recognised the plaintiffs as its members. Secondly, it is contended that Article 66 requires the Tamil Nadu Football Association to create a permanent panel of Arbitrators and the jurisdiction of Arbitrators have also been set out in Article 67. The obligations of the member clubs are also stated in Article 68. It is the contention of the respondents/plaintiffs that the applicant Association has not set up an Arbitration Tribunal as required under the statutes. In the absence of setting up of an Arbitration Tribunal as required under the said statutes, the applicant cannot seek reference to Arbitration.

Counsel appearing for Mr.J.Arulprakasam for the applicant and Mr.N.L.Rajah, learned Senior Counsel appearing for Mr.K.Seshasayee for the respondents.

8. Mr.S.V.Jayaraman, learned Senior Counsel appearing for the applicant would rely upon Articles 66, 67 and 68 of the statutes of the applicant Association and contend that the plaintiffs have a right to seek Arbitration and they cannot approach the Court directly. Therefore, he would submit that this Court must stop further proceedings in the suit and refer the dispute for Arbitration.

9. Contending contra, Mr.N.L.Rajah, learned Senior Counsel appearing for the plaintiffs/respondents would vehemently contend that in the absence of an Arbitration Tribunal being named by the applicant Association, the plaintiffs cannot be expected to approach the Association for Arbitration. Pointing out that Article 63 of the Statute of the applicant Association names three Judicial Bodies, which are,

- 1.The Disciplinary Committee
- 2.The Appeal Committee
- 3.The Arbitration Tribunal

10. While Article 64 deals with the Disciplinary Committee, Article 65 deals with the Appeal Committee.

Article 66 requires the Tamil Nadu Football Association to nominate a panel of independent Arbitrators to resolve any dispute between Tamil Nadu Football Association, its

members, clubs, players, officials and all those involved in the game of Football. He would also invite my attention to Article 67 which prescribes the jurisdiction of the Arbitrators. Relying upon the above provisions, Mr.N.L.Rajah, learned Senior Counsel appearing for the respondents/plaintiffs would contend that the Tamil Nadu Football Association has not formed a permanent Arbitration Tribunal and in the absence of such Tribunal, the plaintiffs cannot be required to seek Arbitration.

11. Referring to Article 46 of the Statutes of the District Football Association, Mr.N.L.Rajah, learned Senior Counsel would contend that even the said Article 46 requires the applicant namely, the Tamil Nadu Football Association to create an option for Arbitration by nominating a Panel of independent Arbitrators to resolve any dispute. Therefore, according to him, the absence of a Panel of Arbitrators having been named by Tamil Nadu Football Association, the member clubs or the respondents cannot be forced to seek Arbitration.

12. As a second limb, Mr.N.L.Rajah, learned Senior Counsel would contend that the Arbitration is confined only to disputes between the Tamil Nadu Football Association, its members, clubs, players, officials and all those involved in the game of and it cannot take in the present dispute, inasmuch as, the Tamilnadu Football Association itself has

not recognised the officer bearers of the 12th plaintiff Association/Krishnagiri Football Association elected on

28.12.2018. The dispute cannot be termed as a dispute between the Tamil Nadu Football Association, its members, clubs, players, officials and those involved in the game of football. Mr.N.L.Rajah, learned Senior Counsel would also invite my attention to the letters written by the Tamil Nadu Football Association/ applicant herein refusing to recognise the Office bearers elected at the meeting held on 28.12.2018 as the office bearers of the 12th plaintiff-Association. Therefore, according to Mr.N.L.Rajah, the dispute is not one between the applicant-Association on one side and its member or members on the other side.

13. The essential question that has to be decided as to whether there is an agreement for Arbitration between the plaintiffs and the defendants and whether the statutes namely, Articles 66, 67 and 68 of the Statutes of the Tamil Nadu Football Association and Article 46 of the statutes of the District Football Association provide for Arbitration of disputes.

14. A reading of Article 66, 67 and 68 statutes of the Tamil Nadu Football Association and Article 46 of the District Football Association which have been extracted above, would show that an obligation is imposed upon the Tamil Nadu Football Association to create an Arbitral Tribunal which can be approached by the parties in case of disputes. Article 63 contemplates three Judicial Bodies namely, the Disciplinary Committee, the Appeal Committee and the Arbitration Tribunal. Article 66 imposes an obligation

on the Tamil Nadu Football Association to create a Arbitration Tribunal, which can be approached by its members, clubs, players, officials etc in the event of disputes. Article 67 sets out the Jurisdiction of the Arbitrators also. The jurisdiction of the Arbitrators as per Article 67(1) is very clear and it is confined to **appeals against decisions and disciplinary sanctions of the last instance, after all previous stages of Appeal available at Tamil Nadu Football Association, Member, Club level have been exhausted.**

15. A reading of Article 67 would make it clear that the Arbitration contemplated is in nature of an appeal against any of the decisions made by the other two Judicial Bodies namely, the Disciplinary Committee and the Appeal Committee. Therefore, an independent dispute relating to an election and recognition of office bearers of the District Football Association cannot be said to be a dispute falling within the sweep of Article 66, 67 and 68 of the Statutes of the Tamil Nadu Football Association. Moreover, as rightly contended by Mr.N.L.Rajah, a permanent Arbitration Tribunal is not in existence.

16. Though, Mr.S.V.Jayaraman, learned Senior Counsel appearing for the applicant submitted that he would place the material to show that a permanent body has been set up and produced certain resolutions. The perusal of the resolutions show that the Tamil Nadu Football Association had nominated a Panel of Arbitrators on 23.08.2016, but the

said nomination has been made only to go into the dispute between one Mr.Malaramaran and Mr.E.Sugumaran. The copies of the letters of the applicant-Association addressed to the said Arbitrators have been produced and they read as follows:

"We are pleased to inform you that your appointment as an arbitrator forming part of the panel of arbitrators of the Tamil Nadu Football Association vide letter dated 26.08.2016, has been ratified by Annual General Congress in its meeting held on 28.08.2016. Please find attached copy of the minutes for your ready reference.

Further, pursuant to the orders dated 15.07.2016 passed by Hon'ble High Court of Judicature, at Madras in O.P.Nos.1005/2015 & 1006/2015, Tamil Nadu Football Association hereby appoints you as Panel of Arbitrators constituting the Arbitral Tribunal to resolve the dispute between Mr.M.Mlaramaran and Mr.E.Sugumaran, and request that the Chairman of the said Tribunal be appointed by nomination amongst you. Copy of the Hon'ble High Court's order is attached herewith for your reference."

17. A reading of the above would show that the said panel of Arbitrators have been appointed by the Tamil Nadu Football Association, pursuant to an order made by this Court in OP Nos.1005 and 1006 of 2016, to resolve the dispute between two individuals. Therefore, the said nomination of Arbitrators cannot be considered as one done under Article 66 of the Statutes of the Tamil Nadu Football Association or Article 46 of the Statutes of the District

Football Association. I therefore, find that the applicant-Association has not created an Arbitral Tribunal in terms of Article 66 (1) or of its own statutes or under Article 46 of the Statutes of the District Football Association. In the absence of such a body, the plaintiffs cannot be expected to seek Arbitration or be referred to Arbitration. Even assuming that an Arbitral Tribunal could be nominated by the Tamil Nadu Football Association, upon a request by the plaintiffs, I do not find that the present dispute which relates to recognition of an election held to a District Foot Ball Association by the Tamil Nadu Football Association can be said to be a dispute referable to Arbitration within the meaning of Article 67 of the statutes of the applicant Association.

18. Article 67 which provides for jurisdiction of Arbitrators clearly sets out the disputes which can be referred to Arbitration. They are appeals against decisions and disciplinary sanctions of the last instance, after all previous stages of appeal available at the Tamil Nadu Football Association, member, club level have been exhausted. This would necessarily mean that the Arbitral Tribunal is in the nature of an Appellate Authority, which can hear disputes relating to disciplinary sanctions made against the members by the other Judicial bodies of the Tamil Nadu Football Association. I am therefore of the considered opinion that there is no Arbitration agreement between the parties to the suit or the statutes of the

Association obliges the plaintiffs to seek Arbitration before approaching this Court by way of a Civil suit.

19. For the foregoing reasons, I do not find any merit in the application filed under Section 8, and the same is dismissed. However in the circumstances there will be no costs.

Sd/.R.S.M.J

28.06.2019

//Certified to be a true copy//
Dated this the day of 2019.

R.s/03.07.2019

COURT OFFICER

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

सत्यमेव जयते

WEB COPY