

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY THE 28TH DAY OF JUNE 2019

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

O.A. No.619 of 2019

IN

C.S.No.391 of 2019

1. S.Hyder Ali

General Secretary

M/s. Tamilnadu Muslim Munnetra Kazhagam

Having its office at

No.7, Vada Maraicoir Street,

1st Floor, Chennai 600 001.

2. P.M.Abdul Khader

S/o. S.A.Peer Mohideen

26/22, Mootaikaran Street,

Mannady, Chennai 600 001.

2. H.Bilal

S/o. A.Haroon Rasheed

5/87, East Cement Road,

Chennai 600 021.

: Applicants/Plaintiffs

Vs.

M.H.Jawahirullah,

President,

M/s. Tamilnadu Muslim Munnetra Kazhagam

Having its office at

No.7, Vada Maraicoir Street

1st Floor, Chennai 600 001.

:Respondent/Defendant

Original Application praying that this Hon'ble Court be pleased to grant an ad-interim injunction restraining the respondent/defendant, his men, agents and servants from in anyway convening and conducting an Executive Committee Meeting of the principal office bearers on 29.06.2019 or on any other date to remove the Applicant/Plaintiff from the post of General Secretary of M/s. Tamil Nadu Muslim Munnetra Kazhagam.

This Original Application coming on this day before this court for hearing, the Court made the following order:-

The suit is one for declaration that the letter dated 20.06.2019 addressed to the first plaintiff and public notice dated 21.06.2019 issued by the defendant calling for the meeting of the General Council of the Tamilnadu Muslim Munnetra Kazhagam on 29.06.2019 is null and void and permanently restraining the defendant from removing the first plaintiff from the post of General Secretary of the Tamilnadu Muslim Munnetra Kazhagam.

2. The Tamil Nadu Muslim Munnetra Kazhagam is an unregistered association of persons. According to the plaintiffs, the first plaintiff is the General Secretary of the said Kazhagam and the defendant is the President. It is stated that the defendant, who is the President has been behaving in an autocratic fashion and has been attempting to remove the members, who raise their voice against him in an undemocratic manner. It is the further case of the plaintiffs that the President has no authority to convene the meeting of the Chief Executive Committee or the General Council of the Tamil Nadu Muslim Munnetra Kazhagam. Therefore, the notice issued by the President namely, the defendant is invalid and illegal.

3. Pending the said suit, this O.A.No.619 of 2019 has been filed seeking an injunction restraining the respondent from convening and conducting an Executive Committee meeting of the Principal Office Bearers on 29.06.2019 or any other date to remove the applicant/plaintiff from the post of General Secretary of the Tamilnadu Muslim Munnetra Kazhagam.

4. The applicant would contend that in view of bye-law 15(2) of the bye-laws of the Tamilnadu Muslim Munnetra Kazhagam, the President who figures as the respondent in this application has no power to convene the meeting of the General Body of the Kazhagam to consider the disciplinary action against the first plaintiff, who is the General Secretary. This prayer is opposed by the respondent contending that bye-law 21(2), which deals with disciplinary action empowers the General Council to take action against the first plaintiff, who is the General Secretary of the Kazhagam. The power to take disciplinary action being vested in the General Council, if the disciplinary action is to be taken against the General Secretary, the meeting of the General Council has to be convened and the General Secretary, who is the first plaintiff cannot prevent convening of a meeting of the General Council claiming that he alone can convene meeting of the General Council.

5. According to the respondent, the bye-laws being silent about the convening of the meeting in a situation like this, the General Executive Council can authorize the President to convene such meeting and such authorization had in fact been given to the President by the Chief Executive Council in its meeting held on 19.06.2019. Therefore, there is no violation of the procedure in the convening of the meeting.

6. I have heard Mr.S.S.Rajesh, learned counsel for the applicant and Mr.T.V.Ramanujam, learned Senior Counsel for the respondent.

7. Mr.S.S.Rajesh, learned counsel appearing for the applicant would vehemently contend that as per bye-law 15 (2), it is the General Secretary, who can convene the meeting of the General Council and in the absence of the General Secretary, the Deputy General Secretary can convene the meeting. Therefore, according to him, the notice dated 20.06.2019 issued by the President/respondent calling for the General Council meeting to be held on 29.06.2019 is invalid. He would also contend that the notice reads that the same has been issued under bye-law 15(1), which does not empower the President to convene a General Council meeting.

8. Per contra, Mr.T.V.Ramanujam, learned Senior Counsel appearing for the respondent would submit that bye-law 21 of the bye-laws confers the power to take disciplinary action against the General Secretary on the General Council . The said bye-laws also provide that disciplinary action against the President, General Secretary, Treasurer and other Senior leaders of the Chief Executive Council can be taken by the General Body and disciplinary action against others can be taken by the President, General Secretary, Treasurers and other Senior leaders.

9. In view of the said provision, according to Mr.T.V.Ramanujam, the convening of the General Council to take disciplinary action against the General Secretary cannot be faulted. If the General Secretary, who has been charged with certain delinquencies refuses to convene the meeting of the General Council the other Office Bearers of the Kazhagam cannot be left high and dry.

10. I have heard the rival submissions. The Bye-law 15(1) of the bye-laws provides that the President will have full power of the conducting the affairs of the Kazhagam and he will have power to strengthen the Kazhagam. Clause 2 of bye-law 15 provides that the General Secretary will be

responsible for implementation of the decisions of the Chief Executive Council. He would also be responsible for convening the meetings of the Chief Executive Council and the General Council, after obtaining approval of the President. It is this, bye-law which is relied on heavily by Mr.S.S.Rajesh to contend that apart from the General Secretary, no else has power to convene General Body meeting. Of course, a bare reading of bye-law 15(2) would justify the submissions of Mr.S.SRajesh. There is lacunae in the bye-laws. Though bye-law 21 empowers the General Council to take disciplinary action against the Secretary, bye-law 15(2) provides, it is the General Secretary, who can convene meeting of the General Council.

11. From the facts of this case, it is found that the purpose of the meeting is for taking disciplinary action against the General Secretary. If a pedantic approach is adopted giving a restricted, meaning to bye-law 2 and the association is restrained from convening the meeting of the General Council to take disciplinary action against the General Secretary on the ground that it is the General Secretary alone, who can convene the meeting of the General Council, the same will lead confusion in the conduct of the affairs of the Kazhagam. The General Secretary against whom certain delinquencies are attributed can continue as such by refusing to convene a meeting of the General Council. Therefore, when the bye-laws are silent and there

is a lacunae, it is open to the Chief Executive Council to authorize the President to convene a meeting of the General Council in order to take disciplinary action against the General Secretary under bye-law 21. The restricted meaning given by Mr.S.S.Rajesh to bye-laws 15(1) and 15(2), in my opinion, will not sub-serve the object of bye-law 21. Therefore, I am of the considered opinion that the President was well within his powers to have convened the meeting of the General Council after obtaining an authorization by the Chief Executive Council in its meeting 19.06.2019. I therefore do not see any prima facie case for grant of an injunction as prayed for in this application. Hence, O.A.No.619 of 2019 is dismissed.

11. It is open to the first plaintiff to attend the meeting. Mr.T.V.Ramanujam, learned Senior Counsel appearing for the respondent would state that the respondent will have no objection for the applicants taking part in the General Council meeting to be held on 29.06.2019 and explaining their case before the General Council.

Sd./-R.S.M.J
28.06.2019

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

JJ 29/08/2019

COURT OFFICER(O.S.)

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