

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

O.S.A.Nos.233 to 236 of 2019
and
C.M.P.Nos.20604 to 20608 of 2019

Adhoc Committee
Coimbatore District Football Association
Represented by its Convenor J.I. Jesudason
Gate No.12, First Floor, Nehru Stadium,
Coimbatore 641 018.

... Appellant
(in all OSAs)

-Vs-

- 1.Mr.K.Raja
Secretary (2014 - 2018)
Coimbatore District Football Association
Residing at V-53, Kovai Pudur
Coimbatore 641 042.
- 2.O.Shanmugasundaram
Vice President (2014-2018)
Coimbatore District Football Association
Residing at No.1/343, Adiyapadham Street
NGGO Colony, Coimbatore 641 022.
- 3.Mr.T.Krishnamurthy
Hon. Asst. Secretary (2014-2018)
Coimbatore District Football Association
Residing at No.145, NH Road
Coimbatore 641 001.
- 4.Tamil Nadu Football Association
Represented by its President
No.73, Jawaharlal Nehru Stadium
Periamet, Chennai 600 002.

- 5.Mr.Jesiah Vilavarayor
Former President
Tamil Nadu Football Association
No.73, Jawaharlal Nehru Stadium
Periamet, Chennai 600 002.

...Respondents
(in all OSAs)

Prayer: Original Side Appeals are filed under Order XXXVI Rule 1 of Original Side Rules R/W. Clause 15 of Letters Patent Act, against the orders, dated 03.04.2019 and 03.07.2019 in A.Nos.7609, 7611 and 7613 of 2018 and A.No.4375 of 2019 in A.No.7609 of 2018, on the file of Court so far as it relates to Clause 5(f) and 5(n) in web copy (Clause 6 and 14 in certified copy).

For Appellant : Mr.D.Shivakumaran
(in all OSAs)

For R1 to R3 : Mr.J.Sivanandaraaj
for Mr.S.Sakthivel
(in all OSAs)

For R4 and R5 : Mr.K.V.Babu
(in all OSAs)

COMMON JUDGMENT

(Judgment of the Court was made by S.MANIKUMAR, J)

Application Nos.7609, 7611 and 7613 of 2018, have been filed by (i) Mr.K.Raja, Secretary (ii) Mr.O.Shanmugasundaram, Vice President, and (iii) Mr.T.Krishnamurthy, Hon. Assistant Secretary, Coimbatore District Football Association, Coimbatore/the applicants therein, against (i) Tamil Nadu Football Association, represented by its President, Chennai; (ii) Mr.Jesiah Vilavarayar, Former President, Tamil Nadu Football Association, Chennai and (iii) Adhoc Committee, Coimbatore District Football Association, Coimbatore, the respondents therein, seeking the following prayers, respectively against each of the applications:

"(i) To grant interim stay of the operation of the order dated 06.07.2018 passed by the Tamilnadu Football Association, Chennai, 1st respondent therein superseding the elected body Coimbatore District Football Association (CDFA) and the consequential appointment of the Ad Hoc Committee.

(ii) To grant stay of the order dated 02.08.2018 passed by the Adhoc Committee, Coimbatore District Football Association, Coimbatore/the 3rd respondent therein, suspending Mr.O.Shanmugasundaram, Vice President, Coimbatore District Football Association, Coimbatore, the 2nd applicant therein from all Football activities of CDFA.

(iii) To grant stay the order dated 02.08.2018 passed by the Adhoc Committee, Coimbatore District Football Association, Coimbatore/the 3rd respondent therein, suspending Mr.T.Krishnamurthy, Hon.Assistant

Secretary, Coimbatore District Football Association, Coimbatore, the 3rd applicant therein from all Football activities of CDFA."

2. Adverting to the arguments of the parties, a learned Single Judge, vide common order in A.Nos.7609, 7611 and 7613 of 2018, dated 03.04.2019, appointed Mr.M.Thangaraju, District Judge (Retd), as the Election Officer, to conduct election to elect the office bearers of Coimbatore District Football Association (CDFA) for a term of four years from the date of their assuming charge after due election.

3. Learned Single Judge, has issued a further direction at Paragraph No.12 of the common order in A.Nos.7609, 7611 and 7613 of 2018, dated 03.04.2019, which reads thus:-

"12. That it is also made clear that, if any disciplinary proceedings initiated against any of the member or erstwhile office bearers by the adhoc committee, on specific allegations, the proceedings so initiated is suspended till the election process is completed, however, the newly elected body shall proceed with those disciplinary proceedings initiated and suspended till the completion of the election, after they take charge of the association, in accordance with the Articles of Association."

4. Subsequently, Application No.4375 of 2019 in A.No.7609 of 2018, has been filed, for clarification.

5. After hearing the learned counsel for the parties on the clarifications sought for, vide order dated 03.07.2019 in A.No.4375 of 2019 in A.No.7609 of 2018, at Paragraph Nos.2 to 13, court below clarified thus,

"2. Now, the clarification is sought for with respect to Clause 5(k) of the order passed by the learned Judge on 03.04.2019, which reads as follows:-

"5(k) - Once the elected office bearers list is published, on that day by 5.00 p.m, the adhoc Committee i.e, the 3rd respondent in these applications, shall hand over the entire administration with records, to the newly elected office bearers."

3. It is now pointed by the learned counsel for the applicant that the Standard Statute of the District Football Association approved by the Tamil Nadu Football Association, in Article 30.3.7 dealing with the duties and responsibilities of the Secretary states as follows:

"30.3.7-He shall handover all the records and

properties of the Association to his successor within a period of 15 days from the date of the election of his successor or from the date of supercession and appointment of an Adhoc Committee of DFA failing which he shall be liable for disciplinary and legal action.

4. As the Standard Statute provides 15 days for handing over the administrative records to the newly elected Office bearers from the date of publication of the election results, the order directing handing over of the entire administration with records by 5 p.m. on the date the election results are published runs contrary to the Statute.

5. The learned counsel for the respondents also agrees for the same.

6. Accordingly, Clause 5(k) is clarified to the effect that once the elected office bearers list is published, the Adhoc Committee (i.e) the applicant herein, who is the third respondent in A.No.7609 of 2018, shall hand over the entire administration with records to the newly elected office bearers within a period of 15 days.

7. The next clarification sought for is with respect to Clause 5(n), wherein the remuneration of the Election Officer is fixed at Rs.3,00,000/- and the same was directed to be shared by the Association as well as the applicants at the rate of 75:25 ratio.

8. The learned counsel for the applicant contends that the Association is in a financial crunch and they should not be overburdened with a direction to pay 75% of the remuneration of the Election Officer.

9. However, it is pointed out that when the order was passed on 03.04.2019, the very same query was raised before this Court and only with the consent of both the parties, the said order was passed, and therefore, there is nothing to clarify on the same.

10. The next clarification is with respect to Clause 5 (1), which says that "It is also made clear that, if any disciplinary proceedings initiated against any of the member of erstwhile office bearers by the adhoc committee, on specific allegations, the proceedings so initiated is suspended till the election process is completed. However, the newly elected body shall proceed with those disciplinary proceedings initiated and suspended till the completion of the election, after they take charge of the association, in accordance with the Articles of Association."

11. It is stated that the Election officer shall also take into account that if any erstwhile office bearer against whom disciplinary action is initiated

by the Adhoc Committee, notwithstanding the said proceedings/ disciplinary action, they shall also be entitled to vote or to participate in the election.

12. Therefore, the order passed by this Court on 03.04.2019 is very clear that even the persons, who are facing the disciplinary proceedings, are eligible to either exercise their vote or participate in the election. Clause 5 (1) only clarifies that if the election process is over, the newly elected body shall proceed with the disciplinary proceedings. Therefore, there is no clarification required to Clause 5(1) and the order passed on 03.04.2019 would hold good.

13. In the result, except Clause 5(k), which is clarified as above, the order dated 03.04.2019 would continue to operate. The above facts go to show that the election process has not yet commenced, despite lapse of three months. Hence, the Election Officer appointed by this Court is directed to put the ball in motion and complete the entire exercise within a period of 45 days from the date of receipt of a copy of this order."

6. Being aggrieved by the orders, dated 03.04.2019 and 03.07.2019 in A.Nos.7609, 7611 and 7613 of 2018 and A.No.4375 of 2018 in A.No.7609 of 2018, instant original side appeals, have been filed.

7. On this day, when the appeals came up for admission, Mr.D.Shivakumaran, learned counsel for the appellants submitted that in the election conducted on 24.09.2019, respondents 2 and 3 herein, who were suspended by the Ad hoc Committee, have been elected as Vice President and Hon. Asst. Secretary of the Coimbatore District Football Association, Coimbatore, respectively.

8. As per Paragraph No.12 of the common order made in A.Nos.7609, 7611 and 7613 of 2018, dated 03.04.2019, if any disciplinary proceedings initiated against any of the member or erstwhile office bearers by the ad hoc committee, on specific allegations, the proceedings so initiated, is suspended till the election process is completed, however, the newly elected body shall proceed with those disciplinary proceedings initiated and suspended till the completion of the election, after they take charge of the association, in accordance with the Articles of Association.

9. Inviting our attention to the above said paragraph and the subsequent development of the respondents 2 and 3, being elected as Vice President and Hon. Asst. Secretary of the Coimbatore District Football Association, Coimbatore,

respectively Mr.D.Shivakumaran, learned counsel for the appellants submitted that, it would not be desirable for the newly elected body, which includes respondents 2 and 3, to continue the disciplinary proceedings against them, as it would amount to judging their own cause.

10. Though Mr.J.Sivanandaraaj, learned counsel representing Mr.S.Sakthivel, counsel for the respondents 1 to 3, submitted that, as per statutes/constitution of the association, other members of the newly elected body, may be permitted to initiate disciplinary proceedings against the respondents 2 and 3 by excluding them in the disciplinary committee and that would not take care of the likelihood of bias against the committee, during the course of hearing, fairly consented for an independent committee, excluding all the members of the Coimbatore District Football Association, Coimbatore.

11. Mr.K.V.Babu, learned counsel for the respondents 4 and 5, submitted that, if an independent committee is constituted, comprising of retired District Judge with two members of the Bar, outside Coimbatore District, there will not be any allegations even.

12. Putting across the suggestions made by the learned counsel for the Ad hoc committee, the appellants herein as well as Mr.K.V.Babu, learned counsel for the respondents 4 and 5, Mr.J.Sivanandaraaj, learned counsel for the respondents 2 and 3/the Vice President and Hon. Assistant Secretary, respectively, newly elected body of Coimbatore District Football Association, has agreed for the same.

13. Thus, all the learned counsel for the contesting parties, have consented for appointment of a Disciplinary Committee, to proceed with disciplinary proceedings already initiated and suspended till the completion of the election.

14. Learned counsel for the contesting parties have also accepted to the appointment of a retired District Judge to be President of the Disciplinary Committee with two members, from the Bar of this Court.

15. Learned counsel for the contesting parties have left the choice of the retired District Judge, as well as the members of the Bar, to us.

16. Mr.M.Sambasivan, retired District Judge, residing at 1st Street, Telephone Colony, Adambakkam, Chennai - 88 (Mobile No.9444102647), is appointed as a Chairperson of the Disciplinary Committee and Mr.G.Anandakrishnan, learned counsel, residing at New No.2, Old no.17, Lakshmanan Street, T.Nagar,

Chennai - 600 017 (Cell No.9940157326) and Mr.S.Kaithamalai Kumaran, learned counsel, residing at Flat No.17, Sridevi Apts, No.2, Anna Avenue, Adyar, Chennai - 600 020, (Cell No.9444170645), would be the members of the Disciplinary Committee.

17. Place of enquiry is fixed at Chennai. Enquiry arrangements and conduct of the disciplinary proceedings, will be made by the parties. Remuneration should be reasonably fixed, by the Disciplinary Committee. Learned counsel for the contesting parties, also consented that the disciplinary proceedings be completed within three months, from the date of receipt of a copy of this order and all the parties, shall cooperate.

18. For the purpose of conducting the disciplinary proceedings, disciplinary committee, would consider as to what are all documents required. List of documents now in possession of the Ad hoc Committee, be handed over to the newly elected body, for the above purpose.

19. In view of the above, instant original side appeals, are disposed of. No Costs. Consequently, the connected civil miscellaneous petitions, are closed.
dm

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Sub Assistant Registrar,
Original Side,
High Court, Madras -104.

2. Mr.M.Sambasivam,
(Retired Judge),
1st Street, Telephone Colony,
Adambakkam, Chennai - 88.
(Ph: 94441 02647)

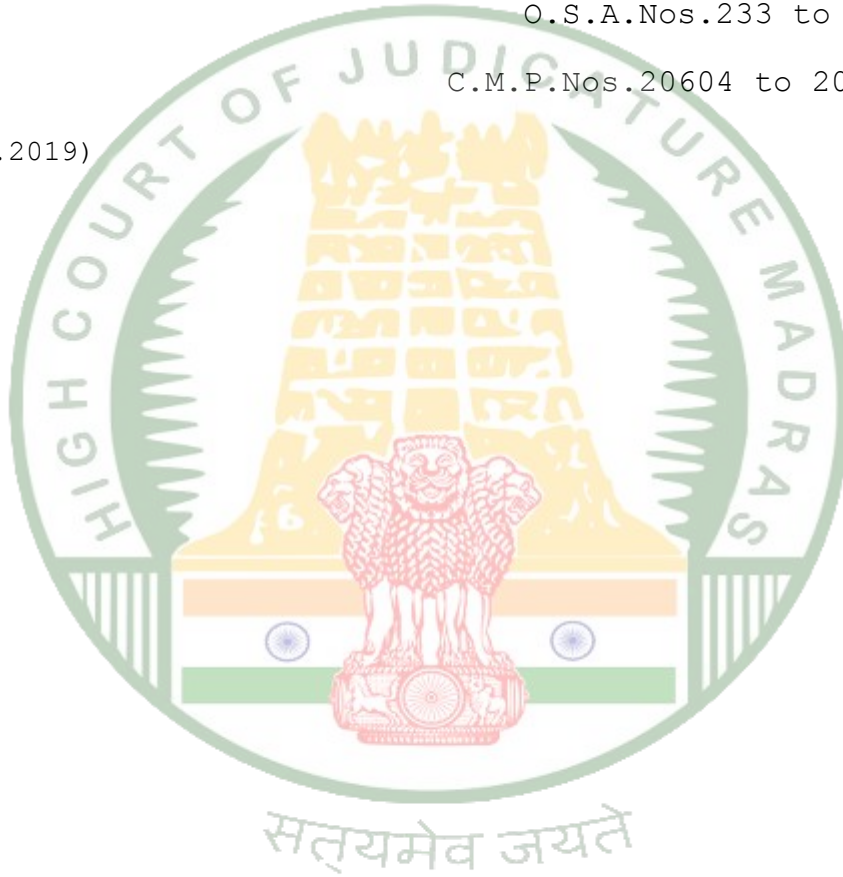
3. Mr.G.Anandakrishnan,
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4. Mr.S.Kaithamalai Kumaran,
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+2cc to Mr.D.Shivakumaran, Advocate, SR.No.84205
+1cc to Mr.J.Sivanandaraj Advocate, SR.No.84231

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