

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 06th DAY OF SEPTEMBER 2019

THE HON'BLE MR. JUSTICE K.KALYANASUNDARAM

O.A. No.816 of 2019
in
C.S. No.523 of 2019

Babu Daniel,
Son of Late Thomas Daniel,
No.629, 27th Street, Korattur,
Chennai - 600 080. Applicant/Plaintiff

-Versus-

1.The Madras Medical Mission,
No.4-A, Dr.J.Jayalalitha Nagar,
Mogappair East, Chennai - 600 037.

2.The Hon'ble Secretary (Interim),
The Madras Medical Mission,
No.4-A, Dr.J.Jayalalitha Nagar,
Mogappair East, Chennai - 600 037.

3.Cherian Abraham,
No.7, 16th Avenue,
Harrington Road,
Chetput, Chennai - 600 031. Respondents/Defendants

O.A. No.816 of 2019:-

Original Application praying that this Hon'ble Court be pleased to grant interim injunction restraining the 3rd Respondent/Defendant-3 from conducting the EGM on 08.09.2019 at 7.00 PM at Hotel Radisson Blue, Chennai pending disposal of the suit.

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

C.S.No.523 of 2019 has been filed for a declaration to declare the notice dated 17.08.2019 issued by the third respondent, calling for an EGM to be held on 08.09.2019 at 7.00 p.m. at Hotel Radisson Blue, Chennai as illegal, null and void. The plaintiff in the suit has come up with this application, seeking for an interim injunction for conducting the EGM on 08.09.2019.

2. According to the applicant, the first respondent is a Society registered under the Societies Registration Act on 12.01.1982. The applicant is a life time member of the first respondent, since 1996 and his membership number is 302. The applicant has also been in the Governing Board from 2001 to 2016 and presently, he is heading the Audit Committee of the first respondent. The applicant would state that as per the rules and regulations of the first respondent, the Governing Board of the Society has control over affairs and funds of the Society. The members of the Governing Board were elected from among the Board at the General Meeting of the Society. The Governing Board shall have a President, Vice President, Secretary, Treasurer and 17 Board Members.

3. The applicant would further state that one Dr.K.Jacob was elected as Honorary Secretary of the Board on 15.01.2009 and the third respondent was elected as Honorary Treasurer of the Board on 09.10.2010 and they were dealing with financial matters of the Society, but some of the Members of the Board are not satisfied about their functioning, which has been raised since 2011 onwards. Eventually, in an Extraordinary General Body Meeting held on 17.09.2017, a Money Committee was appointed by the General Body to inquire into the financial matters of the Society and one Dr.Suja Issac was appointed as a Convener by the President Bishop, vide letter dated 19.09.2017.

4. It is alleged by the applicant that the report of the Money Committee submitted to the Governing Board, pointing out financial irregularities amounting to Rs.186.63 Crores, was not taken seriously and hence, an EGM was requisitioned by the 33 Members of the Society, which was held on 22.06.2019. It is also stated that the Money Committee report was tabled at the meeting and read out to the Members and in pursuance thereto, Resolutions were passed in the Extraordinary General Body Meeting held on

22.06.2019, resolving to appoint 5 Member Committee to grant, short-list and select a professional agent to conduct a forensic audit of the financial affairs of the Society. Further, by another Resolution, Dr.Jacob and Mr.Cherian Abraham were suspended from all positions held by them with the Society. Resolution was approved by the President of the first respondent-Society and the same was informed to both Dr.K.Jacob and Mr.Cherian Abraham by the President, vide letter dated 23.06.2019. Thereafter, Deloitte Touche Tohmatsu India Private Limited was appointed to investigate the financial improprieties and they have already started their investigation.

5. The applicant would state that the third respondent, by a requisition letter dated 18.07.2019, requested the Governing Board for conducting an EGM to discuss on the proceedings of the Extraordinary General Meeting dated 22.06.2019 and to recall of the resolution passed at the Extra-Ordinary General Meeting on that day. Since the Governing Board took a decision on 16.08.2018 not to convene the EGM, the third respondent issued a notice dated 17.08.2019 for an EGM to be convened on 08.09.2019.

6. The notice issued by the third respondent, dated

17.08.2019, has been assailed by the plaintiff in the suit on the ground that it is not in consonance with Section 28 of the Societies Registration Act; the third respondent did not challenge the appointment of the Money Committee report in the year 2017; the appointment of Forensic Audit and suspension of the third respondent and Dr.K.Jacob and it is against the Bye-laws of the Society.

7. A detailed counter affidavit has been filed by the third respondent disputing and denying the allegations of the applicant. It is stated that the Resolution passed in the EGM on 22.06.2019 is illegal Resolution and the decision was taken by a small majority of members. Hence, an EGM is called with a requisition of 60 members out of 133 members and to recall those Resolutions and this application has been filed at the eleventh hour in the desperate hope of preventing the majority of members from governing the Board. It is further stated that the applicant has not even established a *prima facie* case of any sort to question the conduct of EGM.

8. Mr.Thomas T.Jacob, learned counsel, representing M/s.Stella Manoharan, learned counsel for the applicant

would urge that the Money Committee was appointed in the year 2017 by the Governing Board and the same was ratified by the President Bishop on 19.09.2017. In pursuance of the decision, the Money Committee had found siphoning of money of Rs.186.63 Crores for the check period 2011 to 2016. Since the report of the Money Committee was not considered by the Governing Board, the same was communicated to the members through e-mail on 17.06.2019. Thereafter, EGM was conducted on 22.06.2019, in which, the report of the Money Committee was placed before the General Body. Subsequently, resolutions were passed on 22.06.2019 to conduct a Forensic Audit of the financial affairs of the Society and on the same day, the third respondent and Dr.K.Jacob were suspended to hold any position in the first respondent-Society.

9. It is further contended that a reputed company is conducting Forensic Audit and they were also paid Rs.10,00,000/- in part to complete the audit. However, before a final decision is taken by the Forensic Audit, the third respondent colluding with some of the members in the Governing Board is now convening a meeting to cover up misappropriation of huge sum of Rs.186.63 Crores.

10. It is further contended by the learned counsel for the applicant that a notice dated 18.07.2019 was issued to call for EGM for discussion and voting on recall of the resolutions passed on 22.06.2019, but in the subsequent notice dated 17.08.2019 was issued only for voting, without any discussion. Further, proxy vote is permitted only for passing Special Resolution as per the Bye-law 89 of the first respondent-Society, however in contravention of the Bye-law and the provisions of the Societies Registration Act, the third respondent is convening a meeting by permitting proxy vote. In this regard, the learned counsel is relying upon the decision of the Division Bench of this Court in ***The Madras Medical Mission & Others vs. State of Tamil Nadu*** [CDJ 2003 MHC 1638]

11. Mr.M.V.Swaroop, learned counsel for the respondents 1 and 2 submitted that they have no objection for granting interim order in this application.

12. Mr.Satish Parasaran, learned Senior Counsel, representing Mr.Hari Radhakrishnan, learned counsel for the third respondent submitted that the decision taken in the

EGM convened on 22.06.2019 was without an Agenda. Though the notice of EGM permitted to vote through proxy, however, proxy votes were not taken into account in the General Body and the resolutions came to be passed with the support of 25 members, out of total 133 members. It is the submission of the learned Senior Counsel that majority of the Members had been kept away in the Meeting. The third respondent issued a notice dated 18.07.2019 to the Governing Board to convene the EGM. Since it was responded, the third respondent issued notice dated 17.08.2017 to convene EGM on 08.09.2019, but the applicant had approached the Court at the eleventh hour, and hence, no indulgence can be shown to the applicant.

13. The learned Senior Counsel further added that out of 133 members, 66 members have requisitioned to convene EGM to discuss the issue in the General Body in a Democratic manner to reconsider the decision taken by the minority members of the first respondent. The third respondent is not worried about the report of the Money Committee and the meeting is not convened to take a decision on the report of the Money Committee. The first respondent is a reputed Society and it has been running a

hospital and a medical college and its members have high profile, but an attempt is being made by two of its members to highjack the entire Society.

14. It is further submitted that Bye-law 89 not specifically excludes voting by proxy. The learned Senior Counsel submitted that most of the members of the first respondent are senior citizens and they shall not be insisted to be present at the time of voting and they can be permitted to vote by proxy, by placing reliance on the decision of this Court in **Sundar V. Srinivasan v. T.Ramasatyanarayana** [(2018) 2 Mad LJ 330]. It was also suggested by the learned Senior Counsel that the EGM may be convened in the presence of a retired Judge of this Court as an observer and after seeing the decision of the EGM, this Court can pass appropriate orders. The applicant has not made out a *prima-facie* case for grant of interim injunction and hence, the application may be dismissed.

15. Heard the rival submissions and perused the materials placed on record.

16. In the present case, it is not in dispute that one Dr.K.Jacob and the third respondent were elected as Honorary Secretary and Honorary Treasurer of the Governing Board of the first respondent in the year 2009 and 2010 respectively. It is the case of the applicant that for the check period 2011 to 2016, both of them had acted without transparency and accountability and hence, Money Committee was appointed to enquire into the money matters of the Society in the General Body Meeting on 17.09.2017. According to the applicant, Money Committee found financial irregularities amounting to Rs.186.63 Crores, but the Governing Board did not take the matter seriously. The factum of convening the Extraordinary General Body Meeting on 22.06.2019 and in the EGM, 5 Member Committee was appointed to conduct a Forensic Audit of the financial affairs of the Society, are not disputed and the third respondent has also not challenged the Resolution.

17. It is an admitted fact that the Forensic Audit is not yet completed and in the meanwhile, the third respondent issued the notice dated 17.08.2019 to recall the Resolutions passed in the meeting on 22.06.2019. Though

the learned Senior Counsel appearing on behalf of the third respondent contended that Members of the first respondent-Society have been prevented to participate in the EGM and their proxy votes were not taken note of, no materials have been produced in support of the contention. It is pertinent to note that the Money Committee was formed in the year 2017 and they found huge irregularities in the functioning of the first respondent-Society amounting to Rs.186.63 Crores. Considering the magnitude of the amount involved in this case, in my considered opinion, it should be allowed to come to a logical conclusion.

18. It is relevant to note that the impugned notice has been issued to convene EGM for voting on the Agenda of recall of the resolutions passed at the EGM held on 22.06.2019. So, any decision to be taken in the meeting would certainly have impact on getting a report from Forensic Agency. Hence, this Court does not find any force in the contention of the learned Senior Counsel for the third respondent that no decision will be taken at the EGM on the report of the Minority Committee.

19. Clause 89 of the Bye-law of the first respondent-Society says that all decision at the General Body or the Governing Board shall be taken by a majority of members present and voting and only in a Special Resolution, proxy is permitted after the amendment to the bye-law in the year 2003. Impugned notice says voting through proxy is permitted. In respect of the first respondent-Society, the Division Bench of this Court in **CDJ 2003 MHC 1638** has observed in paragraph 30 of the judgement, the proxies are permitted only for the purpose of passing Special Resolutions. In pursuance of the judgment, the first respondent has amended the bye-laws incorporating Clause 90 of the Bye-law. Since the notice is issued against the bye law and the decision of the Division Bench referred supra, it would not be appropriate to permit the parties to hold EGM as per the impugned notice. The decision referred by the learned Senior Counsel for the third respondent is distinguishable on facts and in view of the earlier judgment on the same point, with great respect, I am not able to follow the decision of the Division Bench in **[(2018) 2 Mad LJ 330]**.

20. For the foregoing reasons and discussions, this

Court is of the considered opinion that the applicant has made out a strong *prima-facie* case for grant of interim injunction. In that view, this application is ordered as prayed for.

21. Post the main suit for hearing on 27.09.2019.

Sd./-M.K.K.S.J
06.09.2019

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

JJ 10/09/2019

COURT OFFICER(O.S.)

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