

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

O.S.A.No.218 of 2019
and C.M.P.No.20085 of 2019

1.S.Hyder Ali
2.P.M.Abdul Khader
3.H.Bilal ... Appellants/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 - 1. ... Respondent/ Respondent/ Defendant

Appeal preferred under Order XXXVI Rule 9 of O.S. Rules r/w
Clause 15 of Letters Patent against the order dated 28.06.2019
made in O.A.No.619 of 2019.

Prayer in O.A.No.619 of 2019:

Application filed under XIV Rule 8 of OS Rules R/W 1 and 2 of
CPC to grant an ad interim injunction restraining the
Respondent/Defendant his men agents and servants from in anyway
convenining 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.Tamilnadu Muslim Munnetra Kazhagam.

Plaint filed under order IV Rule of OS Rules Read with order
VII Rule 1 and section 151 of CPC to declare letter dated
20/06/2019 to the first plaintiff and public notice dated
21/06/2019 issued by the defendant calling for an Executive
Committee Meeting of the principal office bearers which is to be
held on 29/06/2019 or on any other dated to remove the first
plaintiff from the post of General Secretary of M/s.Tamilnadu
Muslim Munnetra Kazhagam as null and void.

Granting a permanent injunction restraining the defendant, his men, agents and servants from in anyway convening and considering an Executive Committee Meeting of the principal office bearers on 29/06/2019 or on any other date to remove the first plaintiff from the post of General Secretary of M/s.Tamilnadu Muslim Munnetra Kazhagam.

For Appellants .. Mr.V.Raghavachari
for Mr.S.S.Rajesh

For Respondent .. Ms.Hema Sampath,
Sr. Counsel
for Mr.S.V.Karthikeyan

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The plaintiffs are the appellants. The suit has been laid for declaration and for permanent injunction. Following are the reliefs sought for in the suit:

A) To declare letter dated 20/06/2019 to the first plaintiff and public notice dated 21/06/2019 issued by the defendant calling for an Executive Committee Meeting of the principal office bearers which is to be held on 29/06/2019 or on any other dated to remove the first plaintiff from the post of General Secretary of M/s.Tamilnadu Muslim Munnetra Kazhagam as null and void.

B)Granting a permanent injunction restraining the defendant, his men, agents and servants from in anyway convening and considering an Executive Committee Meeting of the principal office bearers on 29/06/2019 or on any other date to remove the first plaintiff from the post of General Secretary of M/s.Tamilnadu Muslim Munnetra Kazhagam.

C)To pay the cost of the suit

D)To pass such other suitable order as this Hon'ble Court may deem fit and necessary on the facts and circumstances of the case and thus render justice.

2.Pending the suit, an application has been filed in

O.A.No.619 of 2019, seeking an order of temporary injunction. The following is the prayer sought for in the said application:

Why this Hon'ble Court should not be pleased to grant an 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.Tamilnadu Muslim Munnetra Kazhagam?

Learned single Judge was pleased to dismiss the application. Hence the present appeal.

3.The first appellant was the secretary of the Tamil Nadu Muslim Munnetra Kazhagam. A meeting was convened by the respondent on 19.06.2019. In the said meeting of the Chief Executive Committee, a decision was taken to convene the meeting of Chief General Body on 29.06.2019 at about 10.30 a.m. This was communicated to the appellants by the letter dated 20.06.2019, which is sought to be declared as illegal. Secondly, the paper publication made to that effect was also sought to be challenged. It appears that thereafter Chief General Body meeting has been convened and a decision has been taken to remove the first appellant from the post of Secretary apart from primary membership.

4.Learned counsel appearing for the appellants submits that a conjoint reading of Bye-law 15 (1) and (2) r/w 21, the President does not have power or authority to convene the meeting so far as the Chief Executive Committee meeting is concerned and it provides for only convening of the Chief General Body meeting. In other words, it is the specific case of the appellants that it is only the first appellant as a Secretary, competent to do so. The second submission of the learned counsel is that no clear seven days notice has been given as mandated under Bye-law 24 for the convening of the Chief General Body meeting. Therefore, the order of the learned single Judge requires interference.

5.Learned senior counsel appearing for the respondent would submit that Bye-law 15 has to be seen contextually. It has also to be read along with Bye-law 21 as rightly done by the learned single Judge. On the question of non-compliance of Bye-law 24, it is submitted that due notice has been given to the first appellant for his presence for the proposed meeting scheduled to be held on 29.06.2019. Apart from the same, paper publication has also been given. The mode of notice has not been prescribed in Bye-laws. The first appellant has not even raised this plea either in the application or also during the argument before the

learned single Judge. Much water has flown under the bridge thereafter. A decision has been taken by the Chief General Body to remove the first appellant from being the Secretary and the primary membership. Therefore, the appeal will have to be dismissed.

6. Bye-law 15 speaks about the role of the President and the Secretary as the case may be. Insofar as the President is concerned, substantial power has been conferred on him under this bye-law. As against the power conferred upon the President, Secretary is only an executor of the decision taken under the aegis of the President. In the case on hand, meeting has been convened on 19.06.2019. It appears there was no difficulty in conduct of the meeting. It is further to be seen that in the meeting, resolution has been passed against the first appellant who was the Secretary at the relevant point of time. Pursuant to the said meeting, a decision was made to convene the Chief General Body meeting on 29.06.2019. Accordingly, notice was issued on 20.06.2019. It is this notice which is under challenge in the suit. The learned senior counsel appearing for the respondent submitted that the prayer though is to challenge the notice dated 20.06.2019 and the paper publication made, it was only against the Chief Executive Committee. This submission is factually correct, but we are not inclined to reject this appeal on this technical ground. As rightly held by the learned single Judge, the power of the President is substantive as against the Secretary which is procedural. His duty is to only carry out the directions. This direction can come from the President or from the Chief Executive Committee. Therefore, looking from any perspective, the appellants do not have any case. Even otherwise, the doctrine of necessity and substantial compliance will have to be seen.

7. Bye-law 21 merely speaks about the power of the General Body. Now this power has already been exercised. To be noted, Bye-law 21 also gives power to the Chief Executive Committee to take disciplinary action. As stated, in the case on hand, the Chief General Body has taken a decision. Therefore, we are in respectful agreement with the finding of the learned single Judge in this regard on the interpretation of Bye-laws 15 and 21.

8. On the second contention raised also, we do not find any merit. As stated by the learned senior counsel for the respondent, the first appellant has not raised this plea. Even otherwise, we do not find any case made out on merit. It is not as if the first appellant has not been served with notice disentitling him from attending the proposed meeting scheduled to be held on 29.06.2019. In fact, the very said notice itself has been put to challenge. It is the first appellant, who did not

seek to attend the Chief General Body. Therefore, the object of such a notice is only to give an intimation to the member to attend the meeting. Thus, even on that count, the appeal deserves to be rejected.

9. Further more, the fact remains that the first appellant is neither a Secretary nor a primary member as of now. This decision has not been taken by the President but by the Chief General Body after deliberation. Initiation can be by anybody. Solong as the significant power is with the Chief general Body, all other procedural aspects would pale into insignificance. Thus, we do not find any error in the order passed by the learned single Judge and accordingly, the Original Side Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10. It has been informed that on the above issue, two suits are pending between the same parties in C.S.Nos.502 and 524 of 2019. Thus, we are of the view that it would be appropriate that all the three suits will have to be heard together. Accordingly, Registry is directed to make sure that all the three suits are heard by the learned single Judge. The appellants are directed to file written statement within a period of four weeks from the date of receipt of a copy of this judgment. The learned single Judge dealing with such cases is required to frame issues within a period of four weeks thereafter. Marking will have to be take place within a period of eight weeks thereafter. The evidence will have to be completed before the Additional Master - II within a further period of eight weeks. After completion of evidence, we request the learned single Judge who is dealing with the final hearing of the suits to make an endeavour to dispose of the suits expeditiously. We make it clear that the respondent shall also file a written statement within a period of four weeks from the date of receipt of a copy of this judgment. We also make it clear that our observations both on fact and law are only prima facie in nature and therefore will not have any bearing in disposing the suits finally.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mmi

To

The Sub Assistant Registrar,
Original Side, High Court, Madras.

+2ccs to Mr.S.S.Rajesh , Advocate SR.No. 105135

O.S.A.No.218 of 2019

A.SK(17/02/2020)