

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 27TH DAY OF SEPTEMBER 2019

THE HON'BLE MR. JUSTICE K.KALYANASUNDARAM

O.A.No.863 of 2019

AND

A.NO. 7132 OF 2019

IN

C.S.NO.553 OF 2019

O.A.No.863 of 2019 :
AND A.NO. 7132 OF 2019:
and C.S.NO.553 OF 2019:

Mr.N.S.BALACHANDHAR
S/o.Mr.N.Srinivasan,
Aged about 40 years,
having office at Flat No.5,
Raaga Apartments, No.66 and 68,
Venkatakrishna Road.
Mandaveli, Ch-28. ..Applicant/Plaintiff
(in all appliations)

-vs-

1.THE HONORARY SECRETARY,
Samyukta Gowda Saraswata Sabha,
A society registered under the provisions,
of the Societies Registration Act,
having its registered office at
No.55, Habibullah Rd. T.Nagar, Ch-17

2. Mr.A.ARJUNA PAI
President of Samyukta Gowda Saraswata Sabha,
office at No.55, Habibullah Rd. T.Nagar, Ch-17

3. DR. H.R.SHANBHOGUE
Vice President of Samyukta Gowda Saraswata Sabha,
office at No.55, Habibullah Rd. T.Nagar, Ch-17

4.Mr.C.J.NAYAK
Honorary Secretary of Samyukta Gowda Saraswata Sabha,
No.55, Habibullah Rd. T.Nagar, Ch-17

5.Mr.VASANT M.SHANBHAG
Joint Secy. of Samyukta Gowda Saraswata Sabha,
No.55, Habibullah Rd. T.Nagar, Ch-17

6. Mr. K. P. LAKSHMANA RAO
Honorary Treasurer of Samyukta Gowda Saraswata Sabha,
No.55, Habibullah Rd. T.Nagar, Ch-17

7. Mrs.VIAJAYALAKSHMI R.PAI
Committee Member of Samyukta Gowda Saraswata Sabha,
No.55, Habibullah Rd. T.Nagar, Ch-17

8.Mrs. VIJAYALAKSHMI R.PRABHU
Committee Member of Samyukta Gowda Saraswata Sabha,
No.55, Habibullah Rd. T.Nagar, Ch-17

9. Mr.V.MURALIDHARA RAO
Committee Member of Samyukta Gowda Saraswata Sabha,
No.55, Habibullah Rd. T.Nagar, Ch-17

10.Mr. H.MOHANDAS PAI
Committee Member of Samyukta Gowda Saraswata Sabha,
No.55, Habibullah Rd. T.Nagar, Ch-17

11. Mr.SURESH A.PAI
Committee Member of Samyukta Gowda Saraswata Sabha,
No.55, Habibullah Rd. T.Nagar, Ch-17

12. Mr.B.BALAKRISHNA RAO
Committee Member of Samyukta Gowda Saraswata Sabha,
No.55, Habibullah Rd. T.Nagar, Ch-17

..Respondents/Defendants
(in all applications)

O.A.No.863 of 2019:

Application praying that this Hon'ble Court be pleased
pleased to grant an ad interim injunction restraining the
Respondents 2 to 12 from conducting elections for the office
of the Managing Committee of the 1st Respondent for the
three years from 2019-2020 to 2021-2022 on basis of the
business item No.6 as contained in the Notice dated
01/09/2019 at the Annual General Body Meeting of the 1st
Respondent that is to be held on 29/09/2019 pending disposal
of the suit.

A.No.7132 of 2019:

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

Application praying that this Hon'ble Court be pleased

pleased to appoint an Advocate Commissioner to conduct the elections for the office of the Managing Committee of the 1st Respondent in accordance with the law.

These applications coming on this day before this court for hearing the court made the following order:

C.S.No.553 of 2019 has been instituted to declare the election of office of the Managing Committee, as per the notice dated 01.09.2019 to be held on 29.09.2019 as illegal, bad in law and etc., and for permanent injunction restraining the defendants 2 to 12 from conducting election in pursuance of the notice, dated 01.09.2019.

2. These applications have been filed by the plaintiff, seeking an order of interim injunction and for appointment of an Advocate Commissioner to conduct the election for the office of the Managing Committee of the first respondent in accordance with law.

3. According to the applicant, the first respondent is a Society, registered under the Societies Registration Act in the year 1925 and the objectives of the Sabha are to provide financial and other assistance for the economically weaker section of the United Gowda Saraswata Community. It is further stated that the applicant is a life member of the first respondent and the respondents 2 to 12 are the present Trustees of the first respondent-Sabha.

4. The applicant alleged that he along with another life member of the first respondent have filed a suit under Section 92 of CPC for framing scheme for better management

and administration of Sabha, since respondents 2 to 12 have committed breach of trust and misuse of office. This Court has ordered notice in the Application No.6408 of 2019 in C.S.Sr.No.112222 of 2019, however before the application is taken up for hearing, the Managing Committee of the first respondent, issued the election notification for conducting election as business Item No.6 in the AGM that is to be held on 29.09.2019 against the Bye-laws of the first respondent and in an undemocratic manner. Hence, the suit.

5. Mr.V.Raghavachari, learned counsel for the applicant has submitted the following submissions:-

(i) As per the Bye-law No.3 of the first respondent, any person of either sex, who is above 18 years is eligible to become a member of the Sabha on payment of the prescribed subscription fees, but in violation of the Bye-law, two Private Limited Companies, viz., M/s.Canara Traders & Printers Pvt. Ltd., and M/s.Baliga Lighting Equipment Pvt. Ltd., have been admitted as members of the first respondent.

(ii) It is the basic requirement that before commencement of the election process, list of eligible members to be finalized and published and the time schedule is too short / insufficient for the members to cast their votes.

(iii) One of the Members, viz., Mr.N.Srinivasan sought for the complete list of the members of the Sabha along

with their contact details and e-mail IDs', but it was not complied with and on the other hand, evasive reply was given by the first respondent, stating that the members had given instructions not to divulge personal details to other members.

(iv) As per the Bye-laws, election shall be conducted by an Election Committee, nominated by the Managing Committee and once a decision is taken to conduct an election, the Managing Committee, shall keep away from the election process, handing over entire responsibility to the Election Committee, but the records show that the Managing Committee is conducting the entire show. The learned counsel also brought to the notice of this Court the letter of the Honorary Secretary of the first respondent.

(v) As per the election schedule, scrutiny of the candidates shall take place on 22.09.2019 in the presence of the candidates, but the nominations of Shri.R.Vinoth Prabhu and Mr.A.Diwakar came to be rejected on 21.09.2019, without notice and in their absence.

6. The learned counsel for the applicant relied upon the decisions reported in the case of **V.Arulkumar v. Tamil Nadu Govt. Nurses' Association (Govt. Recognised)** [2015 (5) CTC 17] and **A.S.Ansar vs. A.K.Abdul Kareem and another** [2018 (6) CTC 407] in support of his contentions that the principle, once election process is started, the Courts

[https://hcservices.ecourts.gov.in/hcservices/](https://hcservices.ecourts.gov.in/hcservices/https://hcservices.ecourts.gov.in/hcservices/) ordinarily intervene, would not apply to this case and in exceptional cases, Courts intervention is

warranted.

7. Mr.Krishna Srinivasan, learned counsel for the respondents, by referring the detailed counter filed by the first respondent made the following submissions:-

(i) The brother of the applicant Mr.S.K.Rahul Vivek is an Advocate and his father-Mr.Srinivasan, is also an Advocate and they have embarked on an unwarranted onslaught of raising false and frivolous allegations against the Managing Committee of the Sabha with an ulterior motive.

(ii) The brother of the applicant, the said Rahul Vivek is contesting for the post of Honorary Secretary of the Sabha and this fact has been deliberately suppressed by the applicant. The applicant having failed to get any support from the members of the Sabha with regard to the candidature of his brother has resorted to this type of unethical practice for stalling the elections, based on false, incorrect and misleading informations.

(iii) As per the customary, the election notice was sent calling the nominations along with Annual Report and the notice of the Annual General Meeting was sent during last week of August 2019, giving 21 days for Annual General Meeting, so that members will have enough time to go through the Annual Report. Even though the Election Procedure Rules, dated 01.09.2019, but there is nothing wrong to sent it in 28.08.2019.

(iv) The list of members with last known addresses was provided to the father of applicant. Since many members

have expressed to the Sabha that their phone numbers and email Ids' shall not be shared for any purpose, they were not provided and the same was also communicated to the applicant.

(v) Bye-law 3(A) and 4(C) were amended in 1981 to permit institutional Life Membership of the Sabha by virtue of donating scholarship endowments. As per the amended Bye-law, M/s.Canara Traders & Printers Pvt. Ltd., was enrolled as a Life Member on 26.10.1982 and M/s.Baliga Lighting Equipment Pvt. Ltd., was enrolled as Life Member on 06.06.1997. Subsequently, the Bye-laws were amended in the year 1999 to restrict the membership of the Sabha only to the eligible individuals of the Gowda Sarawata Community. It is further stated that the said Institutional Members of the Sabha have never cast vote during elections to the Sabha, but without knowing the history of the Sabha and its Bye-laws, false allegations have been made in the affidavit.

(vi) During the current year, the very same election process which have been followed by several years, is being followed in the present election. Mr.K.Umesh Nayak was appointed as an Electoral Officer on 25.08.2019 and the Election Officer and fellow scrutinizers are not from members of the Managing Committee and also not related to the candidates. The Electoral Officer and his staff are independent of any office bearer or committee member of the Sabha and the Electoral Officer has the full rights in

conducting the elections and framing electoral rules, which is presently being done in a fair and proper manner.

(vii) Though the total number of members on the roll of the Sabha is 2727, but in the earlier elections around 500 to 600 members only attended the Annual General Meeting. After careful consideration of earlier elections, the Managing Committee has considered the time from 04.15 p.m. to 06.15 p.m. would be sufficient for the members to cast their vote and if the time is not found enough, the members who are already in the queue will be allowed to cast their vote.

(viii) The election process is very fair and proper and adequate checks and balances and proper procedure is being followed and hence, there is no requirement for appointment of an Advocate Commissioner to conduct election of the Sabha and no *prima facie* case is made out or balance of convenience for grant of interim orders in favour of the applicant.

8. The learned counsel for the respondents placed reliance on the following decisions in support of his submissions that after commencement of election process, it cannot be stalled by the Courts:-

(i) **Medical Council of India Vs. The Registrar / Returning Officer, Tamil Nadu Dr.M.G.R. Medical University and Ors.** [2014 (2) LW 838]

<https://hcservices.ecourts.gov.in/hcservice9/17>. It is well settled that once the election process commenced, then the same cannot

be stayed by the Courts. At this juncture, it is useful to refer to the following decisions of the Apex Court on this aspect:

(a) In MANU/SC/1116/2011 : 2011 (13) SCC 774, Supreme Court Bar Association and Others v. B.D. Kaushik, at paragraphs 43 and 61, the Apex Court has held as follows:

'43. It hardly needs to be emphasised that in any body governed by democratic principles, no member has a right to claim an injunction so as to stall the formation of the governing body of the Association. No such right exists in election matters since exercise of a right conferred by a rule is always subject to the qualifications prescribed and limitations imposed thereunder.

61. This Court has no doubt at all that the injunction granted by the learned Judge has propensity to intervene and interfere with the election process which had already started. Apart from the prayers claimed in the applications filed under Order 39 Rules 1 and 2 read with Section 151 CPC the Court could not have ignored the effect of granting an injunction. If the injunction granted by the learned Judge had not been stayed by this Court, the office-bearers of SCBA would have been required to prepare a new voters' list as if unamended Rule 18 was in operation and the exercise undertaken by them for preparing voters' list in the light of the amended Rule 18 would have been of no consequence. Thus the injunction claimed by the respondent-plaintiffs which had very wide repercussions on the elections, which were to be held in the year 2003, should not have been granted by the learned Judge.'

(b) In another decision reported in MANU/SC/0602/2001 : 2001 (8) SCC 509, Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Another v. State of Maharashtra, the Apex Court has held at paragraph 12 as follows:

'12. In view of the finding that preparation of the electoral roll being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll.'

(c) In another decision reported in MANU/SC/0540/2000 : 2000 (8) SCC 216, Election Commission of India v. Ashok Kumar, the Hon'ble Supreme Court considered the jurisdiction of the High Court to entertain the petitions under Article 226 of the Constitution of India to issue interim direction after commencement of electoral process. At paragraph 32 of the said decision, it has been observed as follows:

'32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:

' (1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

(2) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be

described as questioning the election.

(3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

(4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.

(5) The court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.'

Considering all these facts and circumstances, we hold that the interim order granted by the

learned Judge in M.P. No. 7 of 2013 in W.P. No. 23914 of 2013 is unsustainable. Accordingly, we allow the writ appeal and consequently, set aside the order made in the said miscellaneous petition. No costs. The connected miscellaneous petitions are closed."

(ii) **S.Nagamani and Ors. Vs. The District Registrar of Societies and Ors.** [Manu/TN/2776/2015]

"14. Further more, once election process commenced, normally Court cannot interfere with the same. In the present case, the writ petition has been filed after commencement of the election processes. Here election notification was issued under Section 25(2) of the Act 03.02.2015 and it was published in Tamil Daily on 05.02.2015. The writ petition has been filed only on 19.02.2015. In this regard, a reference could be placed in the judgment delivered by a Division Bench of this Court reported in 2005 Writ L.R. 733 [A.Babu Rao Vs Bar Council of Tamil Nadu & another], wherein it has been held as follows:-

"2. It is well settled by a series of decisions of the Supreme Court that once the election process has started the Court should not interfere, vide Anugrah Narain Singh Vs State of U.P., MANU/SC/1252/1996 : (1996) 6 SCC 303, Lakshmi Charan Sen Vs A.K.M. Hassan Uzzaman, MANU/SC/0173/1985 : AIR 1985 SC 1233, Boddula Krishnaiah Vs State Election Commissioner, MANU/SC/0417/1996 : AIR 1996 SC 1595, etc.,

3. In our opinion although Art.329(b) of the Constitution only relates to the elections held for Parliament or the State Legislative Assemblies, the principle of that provision also applies to elections held under statutes such as Municipal

Elections, Panchayat Elections, etc. Even regarding such elections, in our opinion, once the election process has commenced, the Court should not interfere until the election results are declared, and even then the Court can come into the picture only when an election petition is filed under the relevant statutory provision, or if there is no such provision for filing an election petition, then by filing a civil suit. Hence, a writ petition should not be entertained. It is well settled that writ is discretionary jurisdiction vide *Chandra Singh Vs State of Rajasthan*, MANU/SC/0479/2003 : JT 2003 (SC) 20 (vide paragraph 42), *R.Nanjappan Vs District Collector, Coimbatore*, MANU/TN/1566/2004 : 2005 WritL.R. 47, etc. Hence, in our opinion the High Court should not exercise its discretion under Article 226 of the Constitution once the election process has started, even though there may not be an express bar as in Article 329(b).

4. As observed by the Supreme Court in *N.P. Ponnuswami Vs Returning Officer, Namakkal*, MANU/SC/0049/1952 : AIR 1952 SC 64 : (1952) 65 L.W. 760:-

"It has always been recognised to be a matter of first importance that elections should be concluded as early as possible according to the time schedule, and all controversial matters and all disputed arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted."

5. The same view has been repeated in *Umesh Shivappa Ambi Vs Angadi Shekava Basappa*, MANU/SC/1017/1998 : AIR 1999 SC 1566, *Kalla Ramakrishna Vs State Election Commission*, MANU/AP/0782/2004 : 2005 (26) All India Cases page 764, etc.

6. The above principle has been repeatedly reiterated by the Supreme Court and yet it is unfortunate that many High Courts in this Country are interfering with the election process midway although the election results have not been declared.

7. Judicial discipline requires the High Courts to follow the decisions of the Supreme Court under Article 141 of the Constitution of India.

8. Since the Supreme Court has repeatedly held that High Courts cannot interfere with the election process once it has commenced, and can come into the picture only when the results thereof are declared, and that too by way of an election petition at the instance of the aggrieved person, or if there is no provision for filing such election petition then by way of a civil suit, we dismiss this writ petition as not maintainable."

The dictum laid down in the above said judgment is squarely applicable to the present facts of the case. Once the election process commenced, the same cannot be challenged by filing the writ petition. Therefore, the second writ petition is also liable to be dismissed."

(iii) **N.P.Ponnuswami and Ors. Vs. Returning Officer,**

Namakkal Constituency and Ors [AIR 1952 SC 64]

सत्यमेव जयते

16. The conclusions which I have arrived at may be summed up briefly as follows :-

"(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the "election"; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the "election" and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress."

(iv) **Election Commission of India Through Secretary**

Vs. Ashok Kumar and Ors. [AIR 2000 SC 2979]

" 32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:

1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

2) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of

the election proceedings cannot be described as questioning the election.

3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.

5) The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the till the Court would act with reluctance and shall not act except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.' "

B.D.Kaushik and Ors. [(2011) 13 SCC 744]

"33. Further, the Appellants had rightly pointed out to the learned Judge that election process had already started and, therefore, injunction, as claimed, should not be granted. Since 1952 this Court has authoritatively laid down that once election process has started the courts should not ordinarily interfere with the said process by way of granting injunction. The argument advanced by the Appellants that election process having started, the injunction should not be granted is dealt with by the learned Judge by holding that in the present case the Plaintiffs have not prayed for injunction against the election process. This Court has no doubt at all that the injunction granted by the learned Judge has propensity to intervene and interfere with election process which had already started. Apart from the prayers claimed in the applications filed under Order 39 Rules 1 and 2 read with Section 151 Code of Civil Procedure the Court could not have ignored the effect of granting an injunction. If the injunction granted by the learned Judge had not been stayed by this Court, the office bearers of the SCBA would have been required to prepare a new voters list as if unamended Rule 18 was in operation and the exercise undertaken by them for preparing voters list in the light of the amended Rule 18 would have been of no consequence. Thus the injunction claimed by the Plaintiffs/Respondents which had very wide repercussions on the elections, which were to be held in the year 2003, should not have been granted by the learned Judge."

9. Heard the rival submissions and carefully perused the materials available on record.

10. The applicant relies upon the following instances to stall the election process:-

(a) The election notification was issued without drawing up and publishing the voters lists;

(b) The Managing Committee has refused to furnish the contact details of the members, therefore, no canvassing worth its name can be conducted by the candidates;

(c) Companies owned by the fifth respondent and other ex-committee Member and trusts have been inducted as members of the Sabha contrary to Bye-law No.3;

(d) No election officer has been appointed to conduct the elections in a free and transparent manner;

(e) Since some of the address of the members are incomplete / unknown, no notice could have been served upon them with a *mala fide* intention to deny them of their voting rights at the election; and

(f) Any scrutiny of the nomination forms done by the members of the Managing Committee will amount to a person judging his own cause as they are entitled for re-election.

11. The only issue arises for consideration in these applications is as to whether the applicant is entitled for interim orders sought for in these applications.

12. A perusal of the records reveal that on 25.12.2018, one N.Srinivasan sent an email to the first respondent,

seeking complete list of members with their contact details and e-mail Ids'. The first respondent replied on 02.01.2019, informing him that e-mail Ids' and telephone numbers of the members are their private properties and to be used only for communication purpose between Sabha and not to be disclosed to other members and without the information, a list could be collected from the Sabha any day during working hours.

13. It is an admitted fact that list of local members were furnished on 03.01.2019 and subsequently list of mofussil members were furnished to the said N.Srinivasan on 28.01.2019. It is seen from the records that thereafter nothing transpired till the first respondent sent a notice, dated 01.09.2019 for convening the Annual General Meeting on 29.09.2019. The grievance of the applicant is that the information given by the members, for not disclosing their details, were not furnished to the applicant. When the respondents came with the specific case that the members objected for revealing their personal details, this Court does not find any substance in the case of the applicant.

14. It is the contention of the learned counsel for the applicant that the first respondent had taken a decision on 01.09.2019 to convene AGM on 29.09.2019, but the notice came to be posted on 28.09.2019, this shows, everything was pre-determined and the election is only farce. It is relevant to point out that pursuant to the earlier decision taken by the Managing Committee, the

notice dated 01.09.2019 was printed and it was sent to the applicant on 28.09.2019, giving 21 days clear notice to convene AGM.

15. In the nomination form, election schedule has been printed as follows:-

- 1) last date for receipt of nominations on 18.09.2019 before 05.30 p.m.
- 2) last date for withdrawal on 21.09.2019 before 5.30 p.m.,
- 3) scrutiny of nomination papers on 22.09.2019.

The nomination of one R.Vinodh Prabhu and A.Diwakar came to be rejected as they were not in conformity with the Bye-laws. Insofar as Vinodh Prabhu is concerned, he was admitted as a Member of the Sabha only on 22.03.2016. As per Section Bye-law 7(A)1, a member of the Sabha for a minimum period of 5 years is eligible to contest the election. The nomination of Mr.A.Diwakar came to be rejected on 21.09.2019, as it was not conformity with Bye-law 7(C), which stipulates no person shall contest for more than one post in the Managing Committee at any one election. A copy of the nomination filed by A.Diwakar has been produced by the learned counsel for the respondents, which shows that he filed the nomination to contest as a Member / Joint Secretary to the Managing Committee. It is pertinent to note that both the nominations were rejected, since they were against the Bye-laws of the first

respondent-Sabha and the aggrieved parties have not come to the Court, challenging the rejection of their nomination forms.

16. The learned counsel for the respondents contended that in the election schedule, dates and time have been mentioned for receipt of nomination, for withdrawal and after the expiry of the time of the withdrawal, the Election Officer along with two other members have taken up the nominations for scrutiny at 6.30 p.m. on 21.09.2019 and rejected the nominations, by which, the applicant is no way prejudiced.

17. According to the applicant, against the Bye-law of the Sabha, a limited company and trust have been admitted as members of the first respondent-Sabha. It is an admitted fact that the Bye-laws of the Sabha underwent amendment in an Extraordinary General Body Meeting held on 04.04.1981. Amended Bye-law No.3, permits admission of firm, institution or other organization to become a member of the first respondent-Sabha. This position continued till the Bye-law was amended on 27.09.2015. It is not disputed that in the interregnum, firms, private limited companies and trusts have been made as members of the Sabha, but unfortunately, this is projected as violation of Bye-law No.3

18. It is a case of the applicant that without publication of the eligible voters list, the election

process was commenced and the addresses of the members are incomplete and their contact details were not furnished to the applicant. It is further alleged that the Managing Committee is conducting the entire show and the work was not entrusted to the Election Officer to conduct the election in a fair and democratic manner. These allegations of the applicant have been denied by the respondents. It is not out of place to mention here that the list of member was sought by one N.Srinivasan, not the applicant herein. The said Srinivasan has not come to the Court and the applicant has not filed nomination to contest the election. In these backdrop, this Court cannot lightly brush aside the allegations made by the respondents.

19. In the decision relied on by the learned counsel for the respondents, the Hon'ble Apex Court and this Court have taken a consistent view that once the election process commenced, the Court shall not normally interfere. Even, in the decisions relied on by the learned counsel for the applicant in **2018 (6) CTC 407 (supra)**, this Court has approved the principles laid down in the above decisions, but it has been held that normally, the Court shall not interfere, but in an extraordinary situation / circumstances, the interference of the Court is warranted.

In **2015 (5) CTC 17 (supra)**, this Court having found violation of the Bye-laws of the Madras Government Nursing Association, interfered in the election process and granted

an order of interim injunction. But, in the case on hand, no violation of the Bye-laws has been established by the applicant, except merely alleging that the election is not conducted in a fair and democratic manner, which could be decided only on appreciation evidence to be adduced by the parties.

20. In fine, in my considered view, the applicant has not shown any extraordinary situation, warranting interference of this Court to stall the election process, which was already commenced. In that view, both the applications are dismissed as devoid of merits. No costs.

Sd/.M.K.K.S.J.

27.09.2019

//Certified to be a true copy//

Dated this the day of 2019.

SU/30.09.2019

COURT OFFICER

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

सत्यमेव जयते

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