

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.32680 of 2019

and

M.P.Nos.33096, 33098, 33099 of 2019

1.Mylai S.Kumar
2.T.Sigymool
3.V.Kalidas

..Petitioner

Vs.

1. The Additional Registrar of Trade Unions-No.1 cum Deputy Commissioner Labour No.1, DMS Complex, Teynampet, Chennai-600 006.
2. South Indian Cine, Television Artists' and Dubbing Artists' Union, (Regn.No.1337/MDS Regd.Under Trade Union Act, 1926) rep.by its General Secretary, Mr.T.N.B.Kathiravan, No.10/33, 4th Street, Vijayaraghavapuram, Saligramam, Chennai-600 093.
3. Mr.Radha Ravi, The President, South Indian Cine, Television Artists' and Dubbing Artists' Union, No.10/33, 4th Street, Vijayaraghavapuram, Saligramam, Chennai-600 093.
4. Mr.C.M.Rajakrishnan, South Indian Cine, Television Artists' and Dubbing Artists' Union, No.10/33, 4th Street,

Vijayaraghavapuram,
Saligramam,
Chennai-600 093.

5. Film Employees Federation of South India (FEFSI),
Rep.by its General Secretary,
Sarvamangala Colony-Aruna Colony,
Jawarhallal Road,
Vadapalani,
Chennai-600 026.

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the 1st respondent to initiate appropriate legal action against the respondents 2 to 4 for contravening the provisions of Trade Unions Act and the registered Bye-Laws of the 2nd respondent Union, by taking into consideration of the petitioner's representation dated 18.11.2019 in accordance with law and on merits within a reasonable period to be fixed by this Court.

For Petitioner : Mr.R.Neelakandan
for P.Rajavel

For Respondents : Mr.J.Ramesh
Additional Government Pleader
for R1.
Mr.Colonel Dr.Edwin Jesudoss
for RR2 to 5.

O R D E R

The relief sought for in the present writ petition is to direct the 1st respondent to initiate appropriate legal action against the respondents 2 to 4 for contravening the provisions of Trade Unions Act and the registered Bye-Laws of the 2nd respondent Union, by taking into consideration the petitioners' representation dated 18.11.2019 in accordance with law and on merits within a reasonable period to be fixed by this Court.

2. The writ petitioners are the members of the second respondent/Union, which is registered under the Trade Unions Act.

3. The learned counsel for the writ petitioner made a submission that the writ petitioners are the members of the second respondent/South Indian Cine, Television Artistes' and Dubbing Artistes' Union, for many years and they have given a complaint to the first respondent regarding certain serious allegations of misappropriation of funds of the Association under the Trade Unions Act. The first respondent is the

Controlling Authority and duty bound to monitor the affairs and functions of the Union and to ensure that such functionings are done in consonance with the provisions of the Act. Under the Trade Unions Act, the Union has to submit their returns and comply with the conditions. The learned counsel for the writ petitioners reiterated that the second respondent/Union had committed several irregularities and there is an allegation of misappropriation of funds of the Union to a larger extent. Misappropriations are being done on several occasions and the members questioned such conduct and they could not be able to resolve the same. Under these circumstances, the writ petitioners have submitted complaints/representations before the first respondent to initiate action against the second respondent/Union and its office bearers on 18.11.2019 and 11.06.2019. The complaints/representations submitted by the writ petitioners were not enquired into and no order was passed in this regard. Thus, the writ petitioners are constrained to move the present writ petition.

4. In this regard, the writ petitioners filed an additional affidavit setting out certain allegations against the second respondent/Union and the said allegations are narrated as under:

4. In contravention of Section 20 of Trade Unions Act, the members are not permitted to inspect the account books and it has been openly denied by referring to an Act of the year 1963, but there is no such enactment prohibiting the inspection of accounts. Similarly, with regard to the distribution of Educational/Medical/Marriage Funds Assistance, the details are not furnished, despite requests made by the members.

5. In violation of bye-laws, the E-Forms for the years 2015, 2016 & 2017 were submitted only in the year 2018 without the approval of the union members and without even providing adequate time to the members for the perusal of accounts and their correctness.

6. While collecting Rs.180/- and Rs.200/- as annual subscription, from the members, in the E-Form it is mentioned only as Rs.120/- for obvious reason to conceal the accounts and collection of excess amount as annual subscription. This is also a clear violation of the Sections 28, 31 and 32 of Trade Unions Act.

7. Without the approval of the members a hall by name 'Shri Kongara Jaggaya Hall' at the second floor of the Union building, at the cost of Rs.7,00,000 (Rs. Seven Lakhs) from and out of the union's fund in an illegal

manner, while the union faced more expenditure than the actual income and thereby contravened the provisions of Trade Unions Act.

8. A perusal of the annual report of the union, there are apparent discrepancies found in the value of the balance sheet, income-expenditure account, Depreciation statement and the statement of income and expenditure statements of the union submitted to the office of the The Addl. Registrar of Trade Unions-1 in the E-Form and the Annual accounts report submitted to the union members during the Annual General Body Meeting, held on 24.11.2019, which ultimately substantiates that there are two different sets of audit reports, balance sheets, income expenditure statements that are prepared and signed i.e. one for the Authority and another is for the members, which itself reveals that there irregularities in managing the accounts for obvious reasons, punishable under Penal laws.

9. As per the annual report for the year 2018, a donation of Rs.2,15,500/- has been received during the year, 2018. But, a perusal of page No.13(Point Nos.5 and 6) and Page No.15 (Point No.12) showed as if the following donations totaling to Rs.4,00,500/- have been received as acknowledged and appreciated.

Mr.K.Rajan	Rs.10,500
Nadigavel M.R.Radha Trust	Rs.25,000
Mr.Radharavi	Rs.3,00,000
Mr.Rajkrishna	Rs.25,000
Ms.K.Sathya	Rs.10,000
Mr.Annadurai	Rs.10,000
Mr.H.R.Murali	Rs.10,000
Total-Rs.4,00,500	

Apparently, there is a huge difference in the accounting of donations received, which is questionable and objectionable, since the above amounts received are classified as donations and not as General Fund or General Welfare Fund.

10. In the Annual General Body Meeting held on 24.11.2019, approval of accounts for the year 2018 was arbitrarily passed, without any debate on the subject. The President of Union, on behalf of the office bearers, refused to answer any question relating to accounts and declared that any questions regarding the accounts shall be raised before the Court; the power to sell the Union building with land is given to the President, which is nothing but a power to act against the interest of the

members and also affording their right in getting livelihood; and the President of the Union is provided with a power to initiate disciplinary proceedings against us for having approached this Hon'ble Court, which also establishes the autocracy in the hands of the office bearers, against the democracy. All those powers are acquired, as if the General Body approved, by relying upon the signature obtained from the members, virtually it is an attendance register. Hence the arbitrary resolutions shall be recalled through a probe by the authority, against the office bearers on the above issues.

5. Narrating the entire allegations committed by the second respondent, the learned counsel for the petitioners made a submission that the first respondent must conduct an enquiry into the allegations and initiate all appropriate actions against the Union and the persons, who are all responsible and liable for such irregularities, if any, committed.

6. The learned counsel for the respondents 2 to 4 opposed the contention by stating that all such allegations are made, based on certain vengeance and there is no basis for such complaint. With a view to demoralize the office bearers, on account of forthcoming elections, the present complaint is filed and there is no material to establish such allegations before the competent authority. It is contended that all the procedures contemplated under the Trade Union Act, had been complied with and all necessary forms and documents were filed before the competent authority and therefore, the second respondent is administering the Union in accordance with the provisions of the Trade Unions Act and the regulations as well as the Bye-laws in-force.

7. This Court is of the considered opinion that all such disputed facts and circumstances cannot be decided by this Court in a writ jurisdiction under Article 226 of the Constitution of India. Such disputed issues are to be decided by verification of documents and by adducing evidence to be produced by the parties before the competent authority. Admittedly, the writ petitioners, as of now, are continuing as members of the second respondent/Union and therefore, their complaints are to be taken on file and an enquiry is to be conducted by affording an opportunity to all the parties concerned and the issues are to be decided on merits and based on the materials available on record. In this view of the matter, the first respondent is directed to conduct an enquiry with reference to the allegations set out by the writ petitioners in their complaint dated 18.11.2019 and 11.06.2019 and decide the matter and initiate all appropriate actions by following the procedures contemplated.

8. With these directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssb
To

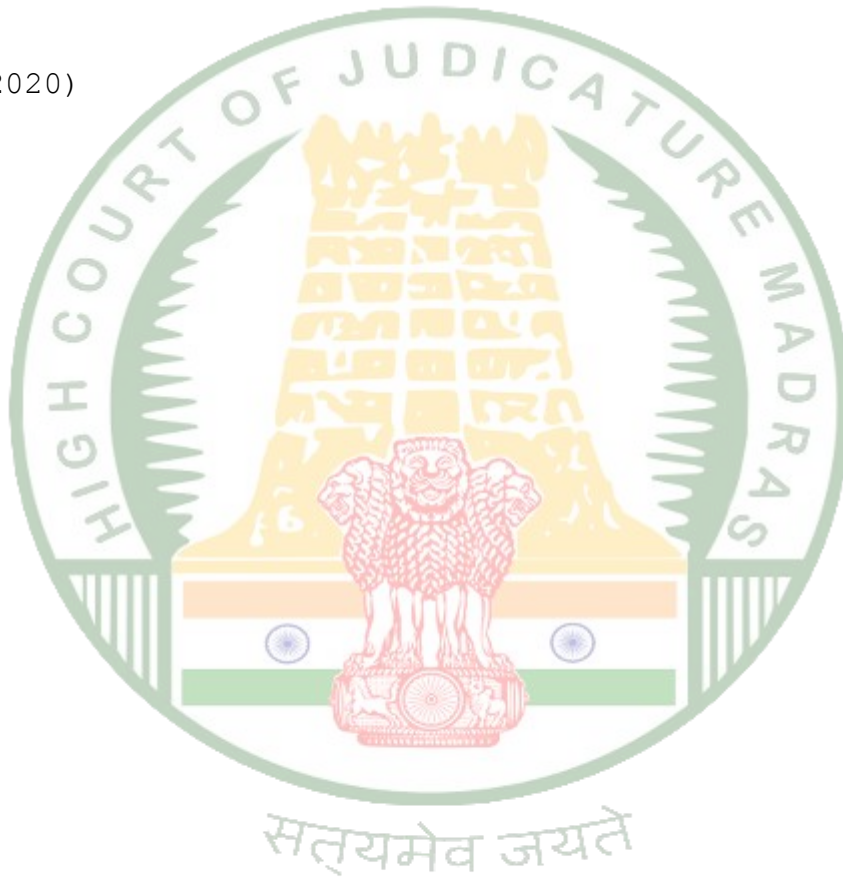
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5. The General Secretary, Film Employees Federation of South India (FEFSI), Sarvamangala Colony-Aruna Colony,

Jawarhallal Road,
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Chennai-600 026.

+1 CC to Mr.P. Rajavel, Advocate sr 99534.
+1 CC to Govt. Pleader sr 99964.

W.P.No.32680 of 2019

RR(CO)
SP(21/01/2020)



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