

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2020

CORAM

THE HONOURABLE Mr.JUSTICE **SENTHILKUMAR RAMAMOORTHY**

O.A. No.29 of 2020
in
C.S.No. 20 of 2020

J.Balu
Joint Secretary
Coimbatore Auto Sports Club
A society registered under the
Society Registration Act, 1860,
24, Nehru Stadium,
Coimbatore.

... Applicant/Plaintiff

Vs.

1. The Secretary General,
Federation of Motor Sports Clubs of India,
(FMSCI)
2. Farokh Commissariate
3. Vicky Chandhok
4. Arindam Ghosh
5. Akbar Ebrahim
6. K.D.Madan
7. J.Prithviraj
8.Shivu Shivappa
9. Zavareh Doctor
10. Maxperience Ltd.,
(Madcap Adventure Xperiences Pvt. Limited)
Represented by its Director,
66, Industrial Development Area,
Sector 16, Gurugram,
Haryana.

...Respondents/Defendants

Original Application filed under Order XIV Rule 8 of the Original Side Rules of the Madras High Court, 1956 read with Order XXXIX Rule 1 & 2 of the Code of Civil Procedure, 1908, grant an ad-interim injunction restraining the respondents/defendants, its men, subordinates, agents, servants or anyone acting thereunder from enforcing the order of the first respondent/first defendant dated 05.11.2019, pending disposal of the suit.

For Petitioner : Mr.V.Lakshminarayanan
For Respondents : Mr.S.R. Rajagopal - R1
Mr.B.Aravind Srevasta - R2,3,5,6,8 & 9
Mr.H.Karthik Seshadri - R7

ORDER

The subject matter of the suit is a decision taken by the first defendant on 05.11.2019 whereby a penalty of Rs.5,00,000/- was imposed on the Applicant/Plaintiff and the Applicant/Plaintiff was prohibited from organising national level car racing events till 31.12.2022. In the said suit, an interim injunction is prayed for to restrain the respondents from, directly or indirectly, enforcing the order of the first respondent dated 05.11.2019 pending disposal of the suit.

2. I heard the learned counsel for the Applicant/Plaintiff, the learned counsel for the first Respondent, the learned counsel for Respondents 2,3,5,6,8 and 9 and the learned counsel for the 7th Respondent.

3. The learned counsel for the Applicant made the following submissions. A rally was organised by the 10th respondent at Jodhpur, Rajasthan, between the 19th and 22nd September, 2019. At the request of the 10th respondent, the Applicant became an associate organiser of the rally. The first Respondent is the Federation of Motor Sports Clubs of India (FMSCI). In order to discharge its function of supervising car rallies and races, the 1st Respondent constituted a sub-committee called Rally Commission (Rallycom) and the Council of the 1st Respondent appointed the 2nd Respondent as the Chairman of Rallycom. Rallycom appointed the 8th Respondent as the Chief Steward and the 9th Respondent as the Observer for the Jodhpur race. The organisers appointed the 7th Respondent as the Clerk of Course (COC). At the rally, an accident occurred at which there were fatalities. Subsequently, a meeting of the Executive Council of the first respondent was convened on 26.09.2019 to review the said accident. At the meeting, those

present therein consisted of the representatives of motor sports clubs and certain office-bearers of the first Respondent. At the said meeting, it was decided to constitute an enquiry committee to recommend positive measures to be taken by the FMSCI to avoid such incidents in the future. The members of the enquiry committee were named and appointed at the meeting and they are the 2nd to 6th Respondents herein. At the said meeting, the 7th respondent herein, who is also the President of the first respondent, participated in that capacity. Pursuant thereto, an e-mail was issued on 04.10.2019 to the persons who played various roles in the Jodhpur race, including the 7th respondent by referring to him as a COC. By the said e-mail, the recipients were put on notice that an enquiry would be conducted by the Enquiry Panel on 12.10.2019. Thereafter, it appears that a meeting of the Council of the 1st Respondent took place on 05.11.2019. At this meeting, the Enquiry Panel's Report was handed over to the 7th and 8th Respondents.

4. Upon receipt of the said report, the 7th respondent pointed out that the Enquiry Panel had exceeded its terms of reference. He also pointed out that only the four Councillors, who are not part of the Enquiry Panel, should vote at the Council Meeting. However, the Councillors proceeded to vote on the recommendation in the Enquiry

Panel Report. A decision was taken that the organiser should be banned for a period of three years, i.e. till 31.12.2022. With regard to the Applicant/associate organiser, a decision was taken that they should be fined a sum of Rs.500,000, banned from organising national championship events till 31.12.2020 and also banned from organising national championship events outside Coimbatore till 31.12.2022.

5. The learned counsel submitted that the main organiser of the event was given a lower penalty whereas the associate organiser was given a higher penalty. In addition, he submitted that no notice was issued to the Applicant either to appear before the Enquiry Panel or to respond to the report of the Enquiry Panel. In fact, he pointed out that the Enquiry Panel's Report was first provided to the applicant by e-mail on 15.11.2019, which e-mail is at page No.59 of the typed set of papers. Therefore, his contention is that the principles of natural justice were violated and that the Applicant was not provided a reasonable opportunity to present its case, either before the Enquiry Panel or the Council. Consequently, according to the learned counsel, there is a *prima facie* case to restrain the Council from giving effect to the decision taken on 05.11.2019.

6. In response to the objection that the Applicant Society had

been struck-off from the Register of Societies, he submitted that the society is not a body corporate but an association of persons. Consequently, the suit is maintainable at the instance of the Joint Secretary of the Society, who is duly authorised as per the resolution dated 16.11.2019 of the Society. He also relied upon a judgment of the Hon'ble Supreme Court in the case of **Illachi Devi and other v. Jain Society, Protection of Orphans India and others, (2003) 8 SCC 413**, wherein, at paragraphs 21 to 23, the Hon'ble Supreme Court held that a society registered under the Societies Registration Act, 1860, is not a body corporate. It was further held therein that in view of the fact that it is not a juristic person, the society is not entitled to apply for the grant of probate or letters of administration. In addition, in paragraph 31 thereof, the Supreme Court held that in contradistinction to companies registered under the Companies Act, a society should be sued in the name of the President, Chairman or Secretary. He also relied upon the judgment of the Hon'ble Supreme Court in **T.P.Daver v. Lodge Victoria and others (Lodge Victoria), AIR 1963 SC 1144**, wherein, at paragraph 8, the Hon'ble Supreme Court held that a civil court can interfere with the decision of a club or society, if the said body acts without jurisdiction or does not act in good faith or acts in

violation of the principles of natural justice. In order to substantiate the contention of bias, he relied upon the decision of the Hon'ble Supreme Court in **Union of India & others v. Sanjay Jethi and others, (2013) 16 SCC 116**, wherein, at paragraph 34, the Hon'ble Supreme Court held that the fundamental facet of the principles of natural justice are ingrained in the decision making process to prevent miscarriage of justice. In addition, at paragraph 51, it was held that the reasonableness of the apprehension of bias should be kept in mind while deciding whether to accept the plea of bias.

7. For all the above reasons, the learned counsel for the Applicant concluded that the Applicant is entitled to an order of interim injunction because a strong *prima facie* case has been made out and that the principles of natural justice were violated in the conduct of the enquiry and in the decision made pursuant to such enquiry.

8. In response, the learned counsel for the first respondent made the following submissions. The Secretary of the Applicant is entitled to sue on behalf of the Applicant and not the Joint Secretary. In order to substantiate this submission, he referred to Article 12 of the Articles of Association and, in particular, to sub clause-(vii) thereof, which states

that the Secretary is the officer to sue and be sued on behalf of the society. The principles of natural justice were complied with in substance because the review meeting was attended by the 7th Respondent, who is also the Secretary of the Applicant. In support of this contention, he referred to the Enquiry Panel's Report at Page 52 of the typed set of papers, wherein the said 7th Respondent is referred to as COC and as the representative of the Coimbatore Auto Sports Club (CASC). He also pointed out that it is clear from the Report that the 7th Respondent acted not only as COC but also as associate organiser, inasmuch as the findings of the panel at paragraph 3, clauses (i), (ii) and (iii) deal entirely with the role of the Applicant as an associate organiser and not as COC. He also referred to Article 15 of the Articles of Association of the 1st Respondent to emphasise that in the event of a dispute, a member shall file an appeal to the Council and that the decision of the Council shall be final and binding on the party aggrieved and the member of the company concerned. He pointed out that there is a provision for an appeal which should have been availed of by the Applicant. He also pointed out that in view of the nature of motor sports in India and the limited number of persons engaged in organizing motor sports events, it is inevitable that each person would don multiple roles.

As regards the composition of the Council, he pointed out that the Council consists of the nominated representatives of each of the founder member clubs and five other clubs which are selected based on performance criteria.

9. The learned counsel also pointed out that enquiries are required to be conducted by the Council and that the Council members act as members of the enquiry panel. As far as the 7th and 8th Respondents are concerned, they also held official positions with regard to the conduct of the race and, therefore, they recused from the decision making process.

10. The learned counsel also contended that the penalty that was imposed was very reasonable given the gravity of the fatal accident. He also pointed out that the balance of convenience is not in favour of the Applicant being granted an interim order because the Applicant is in a position to organise events within Coimbatore. Even with regard to organising events outside Coimbatore, he pointed out that the calendar has been fixed till 31.12.2020 and, therefore, no prejudice would be caused to the Applicant, if an interim order is not granted pending

disposal of the suit.

11. The learned counsel for the 7th Respondent made submissions thereafter. His principal contention was that the terms of reference of the Enquiry Panel was to suggest measures to ensure that such tragic incidents did not recur. In support of the submission, he referred to the minutes of the review meeting held on 26.09.2019 wherein the 8th Respondent stated that all the members of the Council should deliberate and come up with concrete suggestions to ensure that such incidents did not recur in future. Even with regard to the constitution of the Enquiry Panel, he pointed out that item 5 of the decisions taken at the said meeting is that the FMSCI shall hold a detailed enquiry on the running of the rally, its permissions and recommend positive measures to be taken by FMSCI to avoid such an incident in future. Therefore, he submitted that as the President of the first Respondent and as the COC, he agreed to the constitution of the Enquiry Panel only for the stated purpose. In this connection, he also referred to an e-mail that was received on 05.10.2019 and pointed out that by the said e-mail, all the officials of the event, including the 7th Respondent, were directed to send a report on the accident.

12. His next contention was that the report of the Enquiry Panel

was not provided to him until the Council meeting on 05.11.2019. Therefore, at the said meeting, he asked the Chairman as to why the Enquiry Report was not sent to him as President of the first Respondent. However, he was informed that it was not sent to him because he is an interested party.

13. Upon receipt of the Enquiry Panel Report at the said meeting, he requested that the members of the Enquiry Panel should not participate in the decision making process and that only the four councillors who were not part of the Enquiry Panel should participate in such decision making. In spite of such objection, the decision was taken by all the councillors, including the members of the Enquiry Panel, both in respect of the Applicant and the 7th Respondent. Therefore, he submitted that he presented an appeal to the IMSAC Panel.

14. The learned counsel for the 2nd, 3rd, 5th, 6th, 8th and 9th Respondents clarified that that the Enquiry Panel exercised powers under Article 2.6.

15. By way of rejoinder, the learned counsel for the Applicant pointed out that the Enquiry Panel was not constituted as per Article

2.6. According to him, the Article 2.6 panel was constituted prior to the rally. In this connection, he referred to the safety plan at Page 113 of the typed set, which specifies the officials of the event. These officials constitute the Committee as per Article 2.6 and not the impugned Enquiry Panel. He also pointed out that the Applicant came to know about the enquiry and the punishment meted out to the Applicant only upon receipt of the e-mail dated 15.11.2019. As regards the right of appeal, he pointed out that, as per Article 13.1.1, such a right of appeal is available only to competitors and that, therefore, the appeal process is not applicable in the instant case. He concluded his submissions by pointing out that the police enquiry is still pending with regard to the accident.

16. I considered the submissions of the learned counsel for the respective parties and examined the records.

17. The principal question that arises for consideration is whether a *prima facie* case is made out by the Applicant to restrain implementation of the decision taken by the first resolution on 05.11.2019.

18. The basis on which an interim injunction is requested is that the Applicant was not provided a reasonable opportunity to participate in the enquiry or in the proceedings of the Council at which the decision was taken to punish the Applicant.

19. In response to a question as to whether the 1st Respondent has framed rules or regulations with regard to the conduct of such enquiry, the learned counsel for the 1st Respondent replied in the negative. Therefore, the general principles that apply in the conduct of an enquiry, which has civil consequences, should be applied to ascertain whether interference is warranted with the decision. Although the principles of natural justice cannot be put into a straight-jacket and would have to be moulded depending on the context, at a minimum, a person should be put on notice of the charge and provided an opportunity to respond both at the enquiry stage and the punishment stage whenever the proposed actions have civil consequences.

20. In this case, I find that the review meeting was conducted on 26.09.2019 by the 1st Respondent. Admittedly, the 7th Respondent participated in the said meeting in the capacity of the President of the 1st Respondent. On prima facie examining the minutes of the said

meeting, I find that it was decided therein to constitute an enquiry panel to recommend measures to ensure that the accidents of the kind that occurred at the Maxperience Rally 2019 did not recur. The constitution of such an enquiry panel was consented to by the 7th Respondent acting as the President of the 1st Respondent. Thus, it appears that the terms of reference of the Enquiry Panel was not to recommend action against the organiser, associate organiser and COC. Pursuant thereto, it appears that an e-mail was sent to the 7th Respondent and other officials, who participated in the rally on 05.10.2019. The said e-mail refers to the 7th Respondent as the COC. It does not refer to him as the Secretary of the Applicant. It also calls for a report from the recipients of the e-mail and, as regards the 7th Respondent, it is recorded in parenthesis that the report was received. The learned counsel for the 1st Respondent did not refute the contention that the said e-mail was not sent separately to the Applicant as a member of the the 1st Respondent. As regards the Report of the Enquiry Panel, once again, the undisputed position is that this Report was not sent either to the Applicant or the 7th Respondent and that the 7th Respondent received the report for the first time at the meeting on 05.11.2019. In this connection, it may be noted that the report is dated

12.10.2019. Eventually, the four members of the Enquiry Panel voted at the Council meeting at which the penalty was decided upon.

21. Therefore, I find that a prima facie case is made out that the principles of natural justice were violated and that the decision making process is prima facie flawed. In this regard, it is pertinent to note that the 1st Respondent has not framed rules or regulations with regard to the conduct of such enquiries and, therefore, the decision cannot be tested against such rules and regulations. Thus, the Applicant fulfils the requirements specified in paragraph 8 of **Lodge Victoria** with regard to interference in such matters. In the affidavit, the Applicant set out in paragraph 28 that it organised rallies in Arunachal Pradesh and other north-eastern States in the last two years and that it would be greatly prejudiced if an interim order is not granted. As regards the monetary penalty of Rs.5,00,000, it has been paid by the Applicant on a "without prejudice" basis. It is not necessary to interfere with the same, at this juncture, and this aspect could be considered at the time of final disposal.

22. I am also of the view that if an interim order is not granted,

the damage that would be caused to the Applicant cannot be compensated subsequently. On the other hand, it would still be possible to punish the Applicant in case the suit is dismissed at a later point of time. Consequently, the order of ad-interim injunction restraining the Respondents from enforcing the order dated 05.11.2019 insofar as the ban on organising events outside Coimbatore is concerned is made absolute. It is made clear that this order shall not preclude any proceedings initiated by the law enforcement agencies or other authorities in respect of the accident.

23. With the above observations, the Original Application is disposed of.

25.02.2020

Index: Yes/No
Internet: Yes/No
Speaking order/Non speaking order

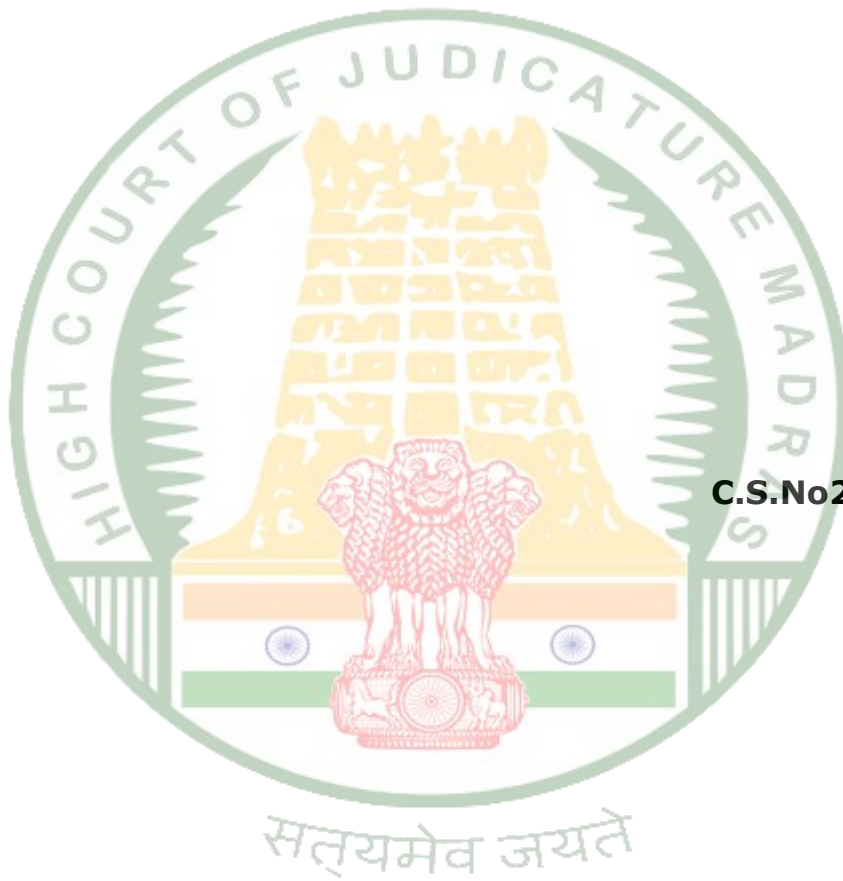
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