

O.A.No.44 of 2020 in
C.S.No.25 of 2020

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and
A.No.304 of 2020
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SENTHILKUMAR RAMAMOORTHY,J

This application is filed for an interim injunction to restrain the first Respondent or his men, agents, servants or any persons acting on behalf of the first Respondent from convening the Special Meeting of the General Body on 09.02.2020 in Ahmedabad, Gujarat, pending disposal of the suit. Although counters have not been filed, by consent of the learned counsel for the Respondents, the application was taken up for disposal. Application No.304 of 2020 is for a stay of the operation of the notice dated 02.01.2020 and is, therefore, incidental to this application.

2. I heard Mr.J.Sivanandaraj for Mr.P.V.Sabaridas, the learned counsel for the Applicant, Mr.AR.L.Sundaresan, the learned senior counsel for the Respondents 1 and 2 assisted by Mr.J.Ravikumar, and Mr.P.S.Raman, the learned senior counsel for the 3rd Respondent assisted by Mr.P.J.Rishikesh.410

3. In view of the fact that the 3rd Respondent is supporting the case of the Applicant, the learned senior counsel for

the 3rd Respondent opened the submissions. His main contention was that the President of the All India Chess Federation(AICF) issued a notice dated 18.12.2019 to convene the Special Meeting of the General Body of the AICF on 10.02.2020. This meeting was convened pursuant to a decision taken at the General Body Meeting on 14.12.2019. Therefore, he contended that the notice dated 02.01.2020, issued by the first Respondent, namely, the Secretary of the AICF on the basis of an alleged requisition given by 13 affiliated associations is illegal, null and void. In support of his submission, the learned senior counsel referred to the minutes of the General Body Meeting at page 154 of the typed set filed by the Applicant/Plaintiff, wherein it is recorded that the members had taken a decision to call for early elections so as to elect a new set of office bearers of the AICF and that the meeting would be held on 10.02.2020 at Chennai as per the provisions of the National Sports Code. Pursuant to the said meeting, he pointed out that the Secretary refused to issue the notice and that, therefore, the President was constrained to issue the notice on 18.12.2019 which is at page 165 of the typed set. He also pointed out that by earlier order dated 20.12.2019 of this Court in O.A. No.1158 of 2019 in C.S. No.728 of 2019, the Central Council was permitted to conduct the meeting on 22.12.2019 but the decisions and

resolutions were not to be implemented until further orders of this Court. In spite of such order, he pointed out that the Central Council took up for discussion items that were not included in the Agenda including the conduct of the election of office bearers of AICF. In order to circumvent the order dated 20.12.2019, he submitted that the Secretary devised the method of making it appear as if a meeting of the General Body was requisitioned by the members of the affiliated associations. Therefore, he submitted that the said notice dated 02.01.2020 for the proposed Special Meeting of the General Body is in contravention of the bye laws of the AICF.

4. The learned counsel for the Applicant made submissions thereafter. By referring to Bye law 15, he pointed out that the President is empowered to preside over meetings of the General Body, Central Council and any committee of which he is a member with a casting vote in case of a tie. By referring to Bye law 16, he pointed out that the Central Council does not have any power with regard to the election of office bearers of the AICF. He also referred to Bye law 15(c), which deals with the powers of the Secretary, and pointed out that the Secretary does not have the power to convene a meeting of the General Body and is only empowered to issue notice

once the President decides to convene the meeting. For all these reasons, he submitted that the notice dated 02.01.2020, which was issued by the Secretary, is illegal and ultra vires the Bye laws. In support of this submission, he referred to and relied upon the judgment of the Hon'ble Supreme Court in **T.P.Dever vs. Lodge Victoria, AIR 1963 SC 1144**, wherein, at paragraph 8, the Hon'ble Supreme Court held that the Court can interfere if a club or society acts in violation of its rules, without jurisdiction or does not act in good faith or acts in violation of the principles of natural justice.

5. In response and to the contrary, the learned senior counsel for the Respondents 1 and 2 made submissions. His first contention was that the General Body Meeting that was convened by the President was cancelled at the instance of the Ministry of Youth Affairs and Sports, Government of India, and that the meeting was held on 28.12.2019 in the presence of a Government observer. By referring to the earlier order of this Court, the learned senior counsel pointed out that the Court permitted the General Body to take decisions on all subjects, including with regard to the Bengal Chess Association Affairs. In order to explain the circumstances under which the Secretary issued the notice dated 02.01.2020, the learned senior

counsel referred to the minutes, as prepared and circulated by the first Respondent, of the General Body Meeting held on 28.12.2019. In particular, he referred to Agenda item No.3 wherein it is recorded that the President unilaterally called a special meeting of the General Body of the AICF on 10.02.2020 to conduct the election of the office bearers of the AICF for the term 2020 to 2023 by notice dated 18.12.2019 without consulting the Central Council and by forming a committee in his personal capacity. It is further recorded therein that the majority of the members urge the chairperson to conduct the election on a holiday at a neutral venue and that, therefore, it was decided, after due deliberation, to conduct the election on 09.02.2020(Sunday) at a neutral place, namely, Ahmedabad. Accordingly, the learned senior counsel contended that the notice dated 02.01.2020 was issued by the first Respondent/ Secretary on the basis of a resolution of the General Body, unlike the notice dated 18.12.2019, which was issued unilaterally by the President. As regards the Bye laws, the learned senior counsel pointed out that, as per Bye law 14(b) & (c), the President and Secretary are required to jointly nominate the returning officer. In this case, the President unilaterally appointed the Returning Officer. Upon nomination of the Returning Officer, the Secretary is required to scrutinize the nominations sent by the members along with

the nominated Returning Officer. Thereafter, the named Returning Officer along with two Assistant Returning Officers nominated by the President are required to conduct the polling of the votes in the election. Therefore, he submitted that the meeting convened by the Secretary on the basis of the General Body resolution is valid and, consequently, the Applicant has not made out a prima facie case to restrain the conduct of the election on the basis of the said notice. In response to a question as to why the meeting had been scheduled at Ahmedabad, Gujarat, instead of Chennai, where the Registered office is situated, the learned senior counsel pointed out the Bye laws enable the AICF to hold the meeting at any place.

6. I considered the submissions of the respective senior counsel/counsel and examined the records.

7. The limited question that arises for consideration is whether the meeting should be held on 10.02.2020 on the basis of the notice dated 18.12.2019 of the President or on 09.02.2020 on the basis of the notice dated 02.01.2020 of the Secretary. In this connection, Bye law 11 is significant and reads as under:

"11. Special Meeting of the General Body:

A Special Meeting of the General Body may be called at any time by the Resolution of the Central Council or on the requisition in writing at least by 10 members of the Federation or by the President to consider such matters mentioned in the Agenda.

The Secretary shall give 14 clear days notice of such meetings to all members with a copy of the proposed agenda.

The Special Meeting requisitioned by the Resolution of the Central Council or on requisition in writing by 10 members shall be called within 30 days of the receipt of the Resolution/Requisition/Direction of the President."

From the above Bye law 11, it is clear that a Special Meeting of the General Body can be convened in any of the three ways set out below:

- (1) By resolution of the Central Council;or
- (2) By requisition in writing of at least 10 members of the Federation; or
- (3) By the President

In this case, the President convened the Special Meeting of the General Body for the purpose of electing the office bearers of the AICF

by notice dated 18.12.2019. Bye law 11 does not specify that the President should call for the Special Meeting of the General Body on the basis of a General Body resolution and it appears that he is empowered to do so at his discretion.

8. According to the learned senior counsel for the 3rd Respondent, the notice dated 18.12.2019 was issued pursuant to the decisions taken at the General Body Meeting on 14.12.2019. This position is contested fiercely by the learned senior counsel for the first and second Respondent. Therefore, one cannot proceed on that basis for interlocutory purposes. However, in any event, as stated above, the President has the power under Bye law 11 to convene a Special Meeting of the General Body and in exercise of such power, a General Body Meeting has been convened by the President. It is also the admitted position that the notice issued by the Secretary is subsequent to that of the President. Although it was contended that the notice dated 02.01.2020 was issued on the basis of a decision of the General Body on 28.12.2019, on perusal of the notice, it appears to be issued on the basis of a requisition by 13 affiliated associations. Once a Special Meeting of the General Body has been convened by the President in accordance with the Bye laws, prima facie, there is no scope for a requisitioned meeting to be held. In other words, such

requisitioned meetings are to be held when the office bearers of the company or society refuse to convene a meeting in spite of being requested to do so. It is also evident that the AICF cannot have two meetings on 09.02.2020 and 10.02.2020 to transact the same business. For all these reasons, I find that the Applicant has made out a strong prima facie case for the grant of an interim injunction to restrain the conduct of the Special Meeting of the General Body on 09.02.2020 to elect the office bearers. In light of the fact that a General Body Meeting has been convened on 10.02.2020, by earlier notice dated 18.12.2019, no prejudice would be caused if an order of interim injunction is granted.

9. However, I find that the President unilaterally appointed the Returning Officer for the conduct of the election on 10.02.2020. As correctly pointed out by the learned senior counsel for the first and second Respondents, this is clearly contrary to Bye law 14(b), which requires that the President and Secretary shall nominate the Returning Officer. It was also brought to my notice that the Secretary also unilaterally appointed a Returning Officer, which is contrary to Bye law 14(b) as stated above. Although persons of considerable stature were appointed by the contesting parties, in light

of the fact that unilateral appointments were made in contravention of the relevant Bye law, I am inclined to appoint the Returning Officer so as to ensure that such appointment and any decisions of the Returning Officers are not mired in controversy. Therefore, I appoint Mr. Justice F.M. Ibrahim Kalifulla, a retired judge of the Hon'ble Supreme Court, as the Returning Officer. In view of the fact that the registered office is in Chennai and keeping in mind the fact that the meeting is being held pursuant to the notice dated 18.12.2019 of the President, such meeting shall take place at Chennai on 10.02.2020.

10. Hence, the present application is disposed of on the following terms:

(1) There shall be an order of interim injunction restraining the conduct of the Special Meeting of the General Body to elect officer bearers of the AICF on 09.02.2020, or on any subsequent date, on the basis of the notice dated 02.01.2020, which was issued by the Secretary of the AICF.

(2) The Special Meeting of the General Body of the AICF to elect the office bearers shall be held on 10.02.2020 at Chennai on the basis of the notice dated 18.12.2019, which was issued by the President of the AICF.

(3) Mr. Justice F.M. Ibrahim Kalifulla, a retired judge of the Supreme Court, is hereby appointed as the Returning Officer for the said election.

(4) He shall be paid a sum of Rs.5,00,000/- (Rupees five lakhs only) as remuneration for functioning as the Returning Officer and ensuring that free and fair elections are conducted. The above remuneration and all expenses of Mr. Justice F.M. Ibrahim Kalifulla shall be borne by the AICF.

(5) Mr. Justice F.M. Ibrahim Kalifulla may appoint assistant returning officers or take necessary assistance, as deemed fit, for the conduct of the elections and all parties are directed to extend full cooperation in this regard.

(6) Consequently, Application No.304 of 2020 is closed.

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Speaking/non speaking Order

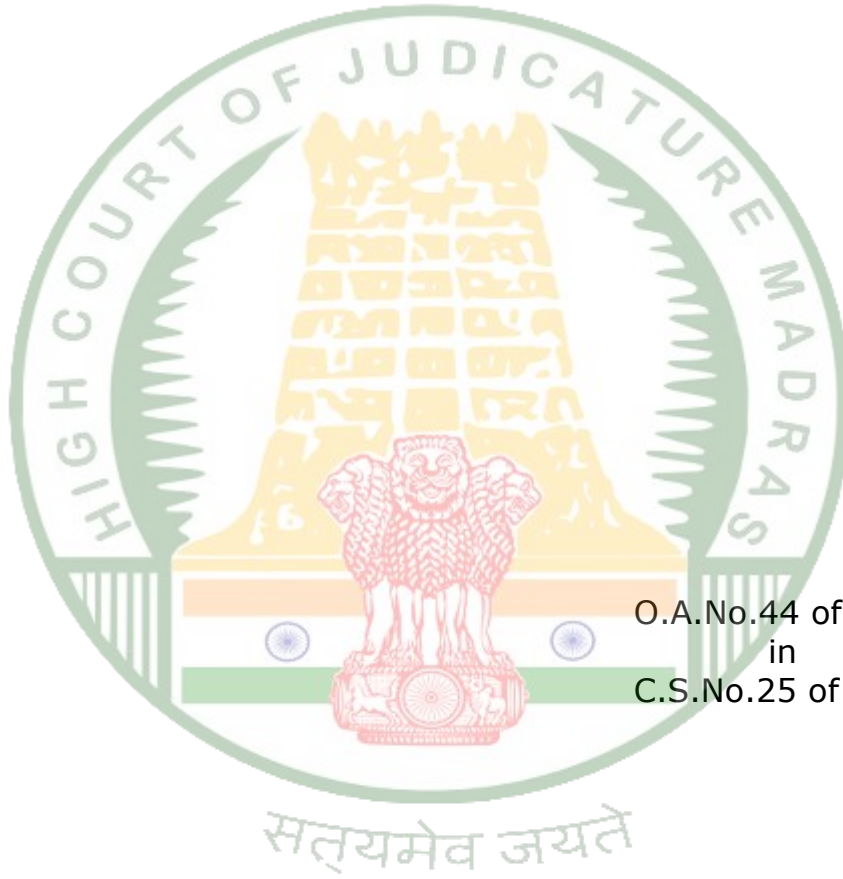
Index : Yes/No

Internet : Yes/No

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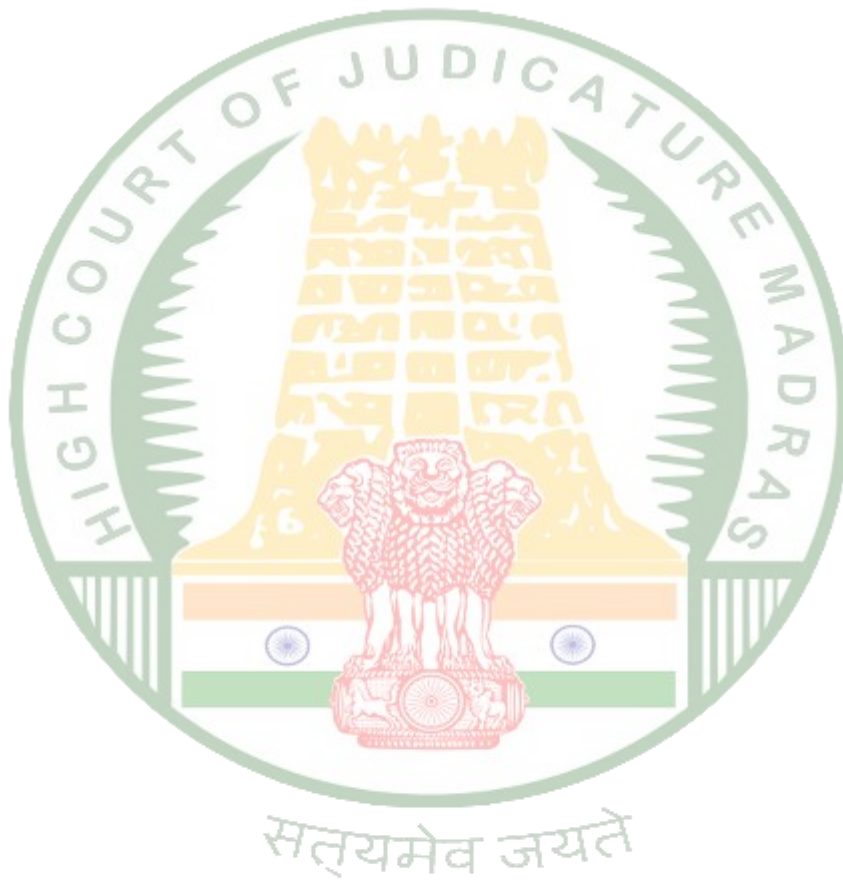


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