

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
14~12~2020	18~12~2020

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.A.Nos.570 to 572 of 2020 in C.S.No.303 of 2020

Mr.S.Siby Rajesh

... Applicant

.Vs.

1. The Chennai Refle Club

Rep. by its Secretary,

“Affiliated to National Rifle Association of India”,
No.24, Old Police Commissioner Office Complex,
Pantheon Road, Egmore, Chennai – 600 008.

2. Mr.Mahesh Kumar Agarwal,

President, The Chennai Refile Club,

“Affiliated to National Rifle Association of India”,
No.24, Old Police Commissioner Office Complex,
Pantheon Road, Egmore, Chennai – 600 008.

3. Mr.M.Gopinath,

Joint Secretary, The Chennai Refile Club,

“Affiliated to National Rifle Association of India”,
No.24, Old Police Commissioner Office Complex,
Pantheon Road, Egmore, Chennai – 600 008.

... Respondents

Prayer: Applications filed under Order XIV Rule 8 of O.S. Rules read with Order XXXIX Rule 1 of CPC for interim injunction restraining the respondents from conducting any fresh election for the post of Honorary Secretary of the 1st respondent Club pursuant to the resolutions said to have been passed as recorded in the minutes of the Executive Committee Meeting dated 02.10.2020 of the first respondent Club, for interim injunction restraining the third defendant from in any manner discharging the functions of Honorary Secretary of the first respondent Club or operating the bank accounts of the 1st respondent Club, for interim injunction restraining the respondents from in any manner interfering with the right of the applicant from functioning as the Honorary Secretary of the first respondent Club, pending disposal of the suit.

For Applicant : AR.L.Sundaresan, SC
for Mrs.AL.Gandhimathi

For respondents : Mr.Vijay Narayan, A.G.,
Asst. By Mr.R.Udhaya Kumar,
AGP – R1 & R2

Ms.P.Veena Suresh – D3

COMMON ORDER

These applications have been filed by the applicant for interim injunction to restrain the respondents from conducting any fresh elections for the post Honorary

Secretary of the first respondent Club pursuant to the resolution passed in the Executive Committee Meeting dated 02.10.2020, for interim injunction restraining the third respondent from in any manner discharging the functions of the Honorary Secretary of the first respondent Club or operating the bank accounts of the first respondent Club and for interim injunction restraining the respondents from in any manner interfering with the rights of the applicant from functioning as the Honorary Secretary of the first respondent Club, pending disposal of the suit.

2. The suit has been filed by the plaintiff for the following reliefs :

a] for a declaration, declaring that the Executive Committee Meeting held on 02.10.2020 of the first defendant Club and the resolutions said to have been passed in the said meeting as recorded in the minutes, signed by the defendants 2 and 3 herein as illegal, ultra vires, the rules and regulations of the first defendant Club;

b] for permanent injunction restraining the defendants from in any manner conducting a fresh election for the post of the Honorary Secretary of the first defendant Club pursuant to the purported minutes of the meeting of the Executive Committee of the first defendant Club dated 02.10.2020.

c] for permanent injunction restraining the third defendant herein from discharging the functions of the Honorary Secretary and operating the bank accounts of the first defendant Club.

d] for cost of the suit.

3. It is the contention of the applicant that he has become the member of Chennai Refile Club in the year 2002 and executive member of the said Club from 2007 till date. In terms of the Bye law VI (I) (a), election for office bearers was conducted on 07.01.2020. The Commissioner of Police, Chennai shall be the ex-officio President of the Club and the Additional Commissioner of Police shall be the Ex-Officio Vice President of the Club and the tenure of the office bearers is three years. One Seetha Rama Rao was elected as the Honorary Secretary and the third defendant was elected as Honorary Joint Secretary and the applicant herein was elected as Quarter Master and one Mr.Satish was elected as one of the Committee Members. The said Seetha Rama Rao, who was elected as the Honorary Secretary, due to his personal inconvenience, resigned from the post of Honorary Secretary on 12.09.2020.

4. In terms of the Bye Laws VIII (7) (b), interim vacancies in the Executive Committee shall be filled by the Executive Committee by co-option from among the members of the club. In accordance with the said clause, in a meeting of the Executive Committee held on 24.09.2020 for a co-option, since there were few choices expressed, elections was held and the applicant offered him as one of the candidate. The third defendant also contested for the said post. In the said elections held on 24.09.2020 for co-option, the applicant had secured 7 votes, while the third defendant secured 3 votes and the other candidate secured one vote. Accordingly, the applicant was co-opted as Honorary Secretary. As the applicant was co-opted as Honorary Secretary, one Mr.Sathish was unanimously elected as the Quarter Master. The above election held on 24.09.2020 for filling of interim vacancies has become final. When the matter stood thus, though the second defendant called for the executive meeting on 02.10.2020, no agenda was prepared and circulated among the members of the Executive Committee for the said meeting. However, the name of the applicant has been nominated with the minutes of the meeting dated 02.10.2020 signed by the the second defendant as the President and the third defendant as the Joint Secretary, recalling the co-option of the applicant. The second respondent conferred authority on the joint secretary to

discharge the function of the Honorary Secretary till the election process is completed. Hence, it is his contention that as the applicant co-opted by proper election and his tenure would expire only in the year 2022, he cannot be non-suited by virtue of an impugned resolution dated 02.10.2020. Hence, it is his further contention that the subsequent resolution is illegal and the decision taken in the above meeting is not correct and hence prayed for interim injunctions.

5. Denying the entire allegations in the applications, it is the contention of the second respondent that as per the Bye laws, the applicant has not functioned as a Quarter Master for not even a single day. He has not taken care of the ammunition stores and sign the weekly statements. The ammunitions and arms are all sensitive and dangerous items that are to be frequently inspected and kept safe or else the same can be easily misused. It is a crucial function that is also a precautionary step of the Club to prevent the misuse of the Arms and Ammunition. It is his contention that the election for Honorary Secretary and Joint Secretary shall be held once in three years on the Annual General Body Meeting as per Bye Law VIII 7 (b). It is submitted that the co-option from the Club members in the interim vacancy of the Honorary Secretary could not have taken place, as the same

would be against the Bye Laws and it would be illegal due to the fact that the members of the Club were not given proper intimation or opportunity to elect or get elected. Even otherwise, there was no unanimous consent among the Executive Committee Members for co-option. Therefore, the claim of the applicant that he was properly co-opted as Honorary Secretary on 24.09.2020 is not correct. There was no willingness for co-option. Once, there is no unanimous co-option, the only other possibility is to conduct election for the post of Honorary Secretary. The applicant has participated in the meeting held on 02.10.2020 and has full knowledge about the purpose of the meeting and it is unanimously accepted that the decision taken on the earlier meeting held on 24.09.2020 has to be reviewed and the date, time and venue has to be fixed for conducting the election to the post of Honorary Secretary. He has infact circulated about the proposed meeting to be held on 02.10.2020 to the Committee Members in the whatsapp Group by name 'CHRC EC Members'. Therefore his contention that he was not aware of discussion in the meeting held on 02.10.2020 is false and misleading. Hence, submitted that as per the Bye Laws his co-option is illegal. Since the applicant has suppressed the material facts, he is not entitled to any injunction.

6. In the reply affidavit, the applicant reiterated that he has been elected as per the Bye Laws and sought for interim injunctions as prayed for.

7. The learned Senior Counsel appearing for the applicant submitted that as per election for office bearers held on 07.01.2020 for the term of three years, the applicant was elected for the post of Quarter Master. It is his contention that the Honorary Secretary elected in the election held on 07.01.2020 has resigned on 12.09.2020 due to personal inconvenience. It is his contention that whenever interim vacancies arise, the same can be filled by the Executive Committee by co-option among the members of the Cub. As per the Bye Law VIII 7 (b), it is his contention that on 24.09.2020, the Executive Committee Meeting has co-opted the applicant as Honorary Secretary and three others also opted for such post. Therefore, there was an election and the applicant has secured 7 votes as against the third defendant in the suit. The third defendant has secured three votes and co-opted as Honorary Secretary and the selection of the applicant was purely on the basis of Bye Law VIII 7 (b). When he was legally elected for the above post, the respondents have called for another meeting on 02.10.2020, wherein despite confirming the earlier meeting held on 24.09.2002, they reviewed the decision

taken in the earlier meeting dated 24.09.2020, co-option of the applicant as Honorary Secretary. Hence, it is his contention that once, the election was properly conducted and the applicant was co-opted as per the Bye Laws, the same cannot be reviewed in the subsequent meeting and the respondents cannot go for any new election. Hence, the applicant having selected as Honorary Secretary, he cannot be non suited at the whims and fancies of the respondents. Though it is stated by the respondents as if some objections were raised by the other members at a later date on 29.09.2020 which necessitated to call for a meeting on 02.10.2020, the alleged communication dated held on 29.09.2020 has not even been referred in the meeting on 02.10.2020. The same clearly indicate that the so called objections by the others by way of a letter to the second respondent, Commissioner of Police is an after thought and created only for the purpose of the present suit. Hence, it is his contention that the meaning of co-option is only appointment by the Executive Committee.

8. When the rule provides a power to the Executive Committee to co-opt any one among the members, it is not necessary that all the members should participate for such co-option. The entire Bye Law makes it very clear that an

absolute power is vested with the Executive Committee to fill the interim vacancies by way of co-option from among the members of the Club. The applicant being a member has rightly expressed his option and he was elected by the majority of the executive members who are present on 24.09.2020. In such view of the fact, without challenging the said appointment, the co-option or appointment cannot be recalled by passing a resolution on a subsequent date on the pretext of reviewing the earlier minutes. Hence, it is his contention that without challenging the election or co-option dated 24.09.2020, the defendants have no right to review the earlier minutes passed by the Executive Committee. It is his further contention that the co-option has been done by the Executive Committee Members who are present including the defendants herein. Therefore, reviewing the above selection and again authorising the person to work as a Secretary, namely the third respondent/third defendant to act as a Secretary is infact there is malafide on the part of the respondents. Admittedly, the third respondent though shown his desire majority of the members of the Committee did not elect him. Therefore, it is his contention that the interim Order has to be continued and if it is vacated the same will lead serious consequences.

7. Countering the arguments, the learned Advocate General Mr.Vijay Narayan submitted that the so called election conducted on 24.09.2020 is against the Bye Laws and the manner in which the interim vacancies to be filled has been given a go-by by the Executive Committee. Therefore, when a person was illegally co-opted against the very Bye-laws, he has no right to claim an equitable relief of injunction. It is his further submission that for the meeting to be held on 02.10.2020 a notice through whatsapp has been issued by the applicant himself and he is very much aware of the agenda and the subjects to be discussed during the meeting on 02.10.2020. Therefore, it is his contention that he was not aware of the meeting and only on seeing the minutes, he came to know about his removal is nothing but suppression of material facts. It is his further contention that on 02.10.2020, the applicant was also very much present and he is aware of the proceedings. Hence, prayed for vacating the injunction.

8. The learned Senior counsel appearing for the third respondent submitted that a person seeking equitable relief has to come to the Court with clean hands. When the applicant has suppressed the material facts, such person is not entitled for any equitable relief. Hence, prayed for dismissal of the applications.

9. Heard the learned Senior Counsel Mr.AR L Sundaresan, appearing for the applicant and the Advocate General Mr.Vijay Narayan appearing for the first and second respondents and the learned Senior counsel Mr.T.R.Rajagopalan appearing for the third respondent and perused the entire materials available on record.

10. The suit has been filed for declaration to declare that the minutes passed in the meeting held on 02.20.2020 as illegal. The fact that the applicant was elected as a Quarter Master in the first defendant Club is not in dispute. Such election was held in the month of January. The tenure of the elected office bearers is for three years and the same will expire in the year 2022. These facts are not disputed by both sides. Similarly in the event any interim vacancy arise for any of the post, such vacancy shall be filled by the Executive Committee by way of co-option among the members of the Club. It is relevant to note that the Club is governed by the Executive Committee consisting of (i) President, (ii) Vice President, (iii) Honorary Secretary, (iv) Honorary Joint Secretary (v) Honorary Treasurer, (vi) Chief Instructor and (vii) ten other members of whom nine will be elected by the General Body and one will be the immediate past Honorary

Secretary as per Section V of the Bye Laws of the Club. The Office bearers of the Committee would be elected once in three years for a period of three years and the election shall be as per Section VI of the Bye Laws. It is not in dispute that the applicant was elected as a Quarter Master. Section VII of the Bye Law deals with powers and duties of the Executive Committee and the same reads as follows :

- [i] Be the Chief Executive Officer of the Club
- [ii] Have the charge of all correspondence and records of the Club
- [iii] Keep a complete and correct stock book
- [iv] Keep up-to-date registers of all members
- [v] Prepare agenda of meetings and send out notices, memo and circulars
- [vi] Prepare and present before the Annual General Body Meeting an Annual Report of the activities of the Club
- [vii] Shall be an ex-officio member of the sub-committees
- [viii] Shall arrange meetings of the Executive Committee and the General Body once in 3 months and once a year respectively.

[ix] Shall check up the accounts of the Club and supervise the activities of the Club

[x] Shall operate the bank account of the Club jointly with the Honorary Treasurer and

[xi] Shall above all, run the Club effectively and efficiently

[g] Quarter Master :

[i] The Quarter Master shall be responsible for the maintenance and upkeep of the arms and stores of the Club and other equipments.

[ii] He shall maintain an up-to-date account of the ammunition and other stores issued to members and render the accounts to the Hon. Treasurer.

11. Bye Law VIII 7 (B) deals with filling of interim vacancies whenever the interim vacancies in Executive Committee for any reason arise, the same shall be filled by the Executive Committee by co-option from the members of the Club. It

is not disputed by both sides that one Mr.Seetha Rama Rao, elected as Honorary Secretary elected in the election held in the month of January resigned in the month of September, i.e., on 12.09.2020. As the interim vacancy arose in the Executive Committee, to fill the above vacancy, it appears that there was a meeting on 24.09.2020. The minutes passed by the Executive Meeting on 24.09.2020, annexed in the typed set when seen, the same clearly indicate that the applicant was elected as Honorary Secretary with 7 votes. The minutes recorded on 24.09.2020, further show that in order to fill the interim vacancies as per Bye Laws, election was conducted among the Executive Members and the applicant appears to have been secured 7 votes as against three votes secured by the third respondent Mr.Gopinath. In view of his selection, his original position was given to one Mr.Satish.

12. Thereafter, it appears that on 02.10.2020, at 4.00 p.m. a meeting was conducted in the Chambers of Commissioner of Police wherein the earlier meeting conducted on 24.09.2020 was reviewed by the members and the decision taken on earlier meeting on 24.09.2020 regarding the selection of Honorary Secretary was recalled mainly on the ground that the election to the post of Honorary Secretary is

open to all the eligible Club members. As a result, the applicant is reverted to his post of Quarter Master and Mr.R.Satish Kumar was reverted as a member of Executive Committee. Challenging the above, the present suit has been filed. The contention of the learned Senior Counsel is that the applicant co-opted and elected as per law and the respondents have no right to review the earlier decision and cancel such election.

13. On perusal of Bye Laws, particularly Bye Law VIII (7) (b) reads as follows :

Interim vacancies occurring in the Executive Committee for any reason, shall be filled by the Executive Committee by co-option from among the members of the Club.

The above Bye Law makes it very clear that the interim vacancy shall be filled by the Executive Committee by co-option among the members of the Club. The word co-opt denote the meaning of appointment. Otherwise appointment by the agreement of all the other members. Therefore, anyone among the members of the club can be co-opted by Executive Member. The members in the Club cannot be restricted to the members of the Executive Committee alone. The very object of

the Bye-Law indicate that such co-option shall be made among the members of the Club. The Bye Laws only indicate that such co-option can be done only by the Executive Committee. The very meaning of co-option is appointment of a person from the members of the Club to such post. For such exercise, the Executive Committee ought to have issued notice to all the members seeking their willingness etc. Object of issuing notice to the other members or giving chance to other persons is for mere participation and proper assessment by Executive Committee to find out suitable person to such post which is to be filled by Executive Committee. This Court is of the view that merely by law provides power to Executive Committee to co-opt anyone among the members of Club, Executive Committee cannot appoint anyone from office bearer without giving chance for the participation by other members of the Club. In fact, the Bye Laws no way contemplate for election. The co-option, as already indicated is only an appointment by Executive Committee. Pre-requisite of such appointment is, such appointment must be among the members of the Committee. Such selection cannot be restricted only to the Executive Members or office bearers alone. The very object of the Bye Law has to be seen. The very object of the Bye-Law is to select or co-opt any person from among the members is only to find a suitable

candidate for such post to administer the Club. Therefore, this Court is of the view that merely because the election was held, which is also contrary to the Bye Laws and a person was elected, he cannot claim as a matter of right that he should continue till the original tenure expires in the year 2022. When a person was wrongly elected contrary to the Bye-Laws, he cannot seek equity before the Court of Law.

14. The suit has been filed mainly on the ground that he was taken aback and he was not aware of any proceedings or minutes passed against him on 02.10.2020. I am unable to persuade myself with the above submissions for the following reasons. The very meeting of the Executive Meeting to be held on 02.10.2020 was called by the applicant as a Honorary Secretary. Whatsapp messages appended to the typed set indicate that the very meeting was called by him. Therefore, it cannot be said that he has no knowledge whatsoever with regard to the so called meeting. It is to be noted that the very duties and responsibilities of the Secretary as per the Bye Law is to send notices and one of the duties as envisaged in the Bye Laws is to send notice for the meeting and preparing agenda etc. Therefore, the contention that he was ignorant of the

meeting and he was kept in dark cannot be countenanced. This Court is unable to persuade itself to such submissions. Further, the minutes dated 02.10.2020 also indicate that he was also present when the decisions had taken place and decisions were reviewed.

15. In such view of the matter, it cannot be said that he has no knowledge about minutes passed. It is to be noted that the meaning of co-opt is to appoint. When the Committee has a power to appoint, it includes power to remove the person appointed. Therefore, when an Executive Committee removed a person when who was elected contrary to the Bye-Laws, this Court is of the view that merely because he was appointed contrary to the Bye Laws, he cannot seek an interim injunction as against the respondents. If such an Order is granted, infact, it amounts to granting the main relief in the suit itself. In such view of the matter, this Court is of the view that the interim Order passed by this Court has to be necessarily vacated.

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16. It is also to be noted that originally the applicant was elected for the post of Quarter Master. The duties and responsibilities of the Quarter Master is

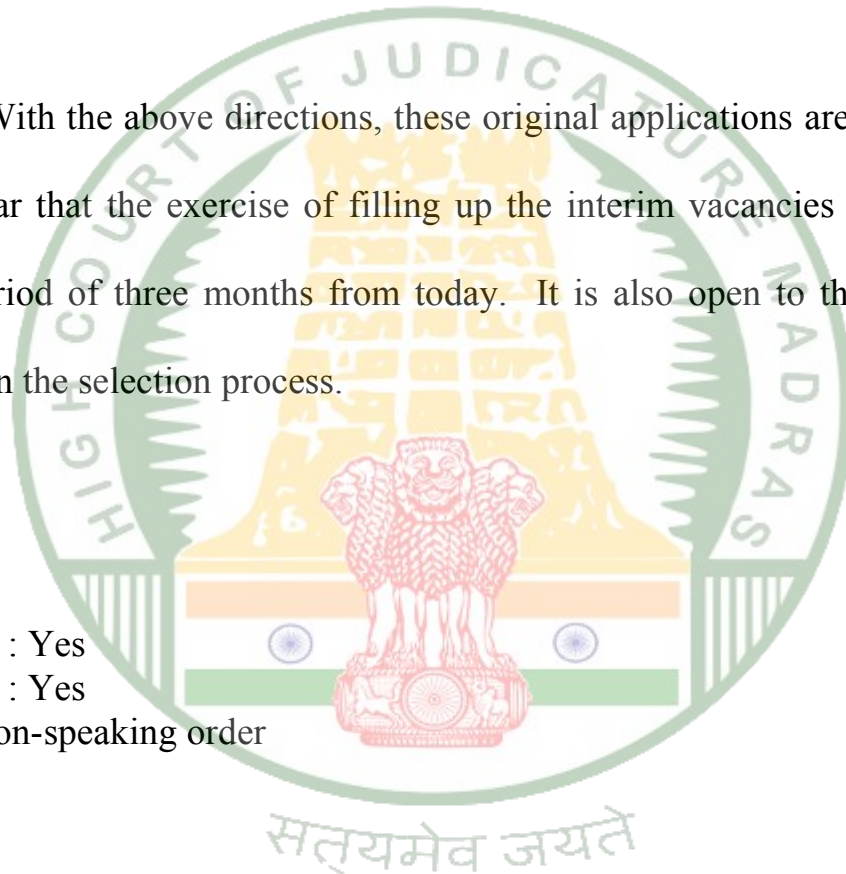
enormous as per the Bye Laws. If really a person is interested in the welfare and development of the Club, one cannot stick to the position only to contend that his position will be for the welfare of the Club, even an ordinary member can contribute for the development of the Club. Admittedly, he is already a Quarter Master and Quarter Master shall be responsible for the maintenance and upkeep of the arms and stores of the Club and other equipments. The Quarter Master shall maintain an up-to-date account of the ammunition and other stores issued to members and render the accounts to the Honorary Treasurer. In such view of the matter, it cannot be said that his right has been prejudiced. The third respondent co-opted for Honorary Secretary and such action by the respondent also cannot be appreciated for the simple reason that the third respondent has already lost in election conducted among the Executive Committee Members. Again placing such person as a Honorary Secretary to operate the bank accounts cannot be permitted and such action by the respondents attach with some malice. Hence, this Court is of the view, in the interest of the Club, the bank account shall be operated by the second respondent Commissioner of Police, ex-officio President and Mr.Umapathy, Honorary Treasurer till the interim vacancy shall be filled as per the Bye Law. Bye Law VIII 7 (b) makes it clear that to fill the interim vacancy

what is required is to co-opt from among the members of the Club. For that, election process is not required. What is required is to give notice to all the members. It is for the members to elect any of the members for such post as there are many people interested for such selection, in that case.

17. With the above directions, these original applications are dismissed. It is made clear that the exercise of filling up the interim vacancies shall be made within a period of three months from today. It is also open to the applicant to participate in the selection process.

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Internet : Yes
Speaking/Non-speaking order
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