

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2020

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.374 of 2020
and
O.A.Nos.694 & 695 of 2020
and
A.No.3080 of 2020

G. Kumar

... Plaintiff

Vs.

1.The Hindu Office
and National Press Employees Union,
Represented by its Secretary Mr. M. Kamalanathan,
No. 1, New Bungalow Street,
Chintadripet, Chennai – 600 002.

2.Mr. Muthukumar,
President Election Committee,
Old No.24, Sankarapuram, 3rd Street,
Choolaimedu, Chennai – 600 094.

3.Mr. Ramanujam,
Vice-President Election Committee,
Old No.24, Sankarapuram, 3rd Street,
Choolaimedu, Chennai – 600 094.

... Defendants

Plaint filed under Order VII Rule 1 C.P.C. read with Order IV Rule 1 of the High Court Original Side Rules praying for:

(i) To declare the notification issued by the defendants 2 and 3 dated 02.12.2020 affixed in the notice board of the 1st defendant as null and void and;

(ii) To grant permanent injunction restraining the defendants 2 and 3 and their men, agents, servants, subordinates, or any person claiming under them from in any manner proceeding in furtherance to notification dated 02.12.2020 and;

(iii) To grant permanent injunction restraining the defendants 2 and 3, their men, agents, servants, subordinates or anybody claiming through them from conducting election to the 1st defendant / The Hindu Office and National Press Employees' Union, having office at No.1, New Bungalow Street, Chintadripet, Chennai – 600 002, pursuant to the notification dated 02.12.2020 or any other subsequent notifications and;

(iv) To direct the defendants to pay the costs of the suit to the plaintiff and;

(v) To grant such other relief or reliefs as this Hon'ble Court may deem fit and necessary in the circumstances of the case and thus render justice.

For Plaintiff : Mr. V. Lakshmi Narayanan
for Mr. Subbu Ranga Bharathi
For defendants : Ms. Gopika Nambiyar
for Mr. T. Sundaravedanam, for R1
Mr. S. Maniraj, for R2

JUDGMENT

Interim relief has been sought to appoint a retired District Judge to conduct or oversee the election of the first respondent in consonance with the bye law by video graphing the entire process of election in A.No.3080 of 2020 and other applications have been filed restraining the respondents/defendants 2 and 3 from conducting the election dated 22.12.2020, pursuant to the notification issued on 02.12.2020.

2. The main contention of the learned counsel appearing for the applicant and respondents is that the notification issued by the Election Committee namely respondents 2 and 3 is contrary to the bye laws and the bye laws have been ignored and so called amendments with regard to Rule 26 is also brought only at the instance of the Executive Committee to reduce the number of votes and to gain advantage. It is the

contention that no General Body Meeting is ever conducted to amend the bye laws. As per the bye laws, amendments can be made to bye laws only in Annual General Body Meeting. Whereas, at the instance of the interested persons, the amendments have been made and as against 13 groups which existed in the year 2017, election was reduced to 11 groups. Hence, it is the contention that the notification issued on 02.12.2020, itself is contrary to bye laws. Hence, prayed for appointing an independent election officer to oversee the election as per the bye law which stood in existence before the so called amendment.

3. Ms. Gopika, learned counsel for the first respondent submitted that the election has been conducted in a fair manner as per the bye laws. Respondents 2 and 3 was in fact the appointed by the Executive Committee as election officers and election notification is issued only as per bye laws. Therefore, the contention of the applicant is not maintainable. The same stand was taken by the counsel appearing for respondents 2 and 3.

4. However, from the submissions, this Court is of the view that all the counsels are in agreement of conducting the election in the fair manner as per bye laws. When the Court posted the question of appointment of a retired District Judge to oversee the election, though the respondents have no objection for appointing the election officer to conduct election as per bye laws, it is their contention that since the bye laws have been amended, the election should be based on the amended bye laws. Except the above contention, for appointing the election officer there is no objection. This Court has perused the entire materials and on perusal of the materials particularly, bye laws any amendments to the bye laws could be made in the Annual General Body Meeting as per Rule 26 of the bye laws. Similarly, the election regulation Rule 26 indicate that postal ballot is permitted only to the persons who were admitted in the hospital or the person who have gone to outstations. Now, it is the contention of the learned counsel that Rule 26 of the election regulation has expanded to the persons who are working outside also. Though, it is the contention of the respondents that there was a General Body Meeting and bye laws have been amended on 10.03.2020,

the typed set produced by the respondents clearly indicate that on 10.03.2020 itself Executive Committee has recommended for amendment to bye laws. On the same day, it appears that the so called Annual General Body Meeting approved the above suggestions. Now, there is nothing placed on record to show that what was the nature of the notice issued to the Annual General Body Meeting, nature of the agenda etc., and respondents have not proved any material to show that Annual General Body Meeting was conducted.

5. It is to be noted that Annual General Body Meeting has to be conducted by issuing proper notice. Whereas in this case, no evidence to show that the notice has been issued. In such view of the matter, when the Executive Committee itself suggested certain amendments which said to have been approved on the same day, this Court *prima-facie* finds that the contention of the respondents that the amendment was made pursuant to the Annual General Body Meeting cannot be countenanced. However, taking note of the fact that the applicant and respondents in agreements for conducting a fair election, this court is of the view that in

order to conduct a fair election, Mr. Mohideen Picthai, retired District Judge, No.35/25, Zackariya Colony, 4th Street, Choolaimedu, Chennai – 600 094, Mob.No.9841585173, is appointed to conduct the election. It is also made clear that the bye laws that originally stood in the year 2017 should be followed and the election officer should follow the bye laws which existed in the year 2017 election and the number of voters at the relevant point of time i.e., in the year 2017, election should be followed and the election officer shall call for the membership and objections and notify the membership and thereafter proceed as per bye laws and conduct election, within three months and the election officer shall make every endeavour to complete election, within a period of three months from the date of receipt of copy of this order. The fee of election officer is Rs.1 lakh.

6. In such view of the matter, this Court is of the view that nothing remains in the suit for adjudication. Accordingly, civil suit is disposed of. No costs. Consequently, connected applications are closed.

7. It is also made clear that the voters who already obtained Voluntary Retirement Scheme and retired need not be considered and it is also made clear that any objection with regard to the finalization of the membership cannot be challenged to prevent the election process. If at all any grievances as against the refusal or acceptance of nomination, same can be canvassed at the time of challenging the election only. Though, the bye laws 28 stipulate, election will be held for 16 groups, it is stated by all the counsels in one voice that in the election conducted for the year 2017, 16 groups were reduced to 13 groups with the consent of the AGM. Therefore, the election officer appointed by this Court is to conduct election for the 13 groups that existed in the year 2017.

8. Mr. V. Lakshmi Narayanan, learned counsel appearing for the applicant-plaintiff by conceding election for 13 groups, also submitted that the election officer to take a decision as to find out whether the 13 groups actually exist for election of this year. Taking into consideration of the bye laws and Rules, Election officer shall file a

report after three months before this Court.

17.12.2020

AT

Copy to
Mr. Mohideen Pitchai,
District and Sessions Judge (Retd),
No.35/25, Zackariya Colony,
4th Street, Choolaimedu,
Chennai – 600 094.

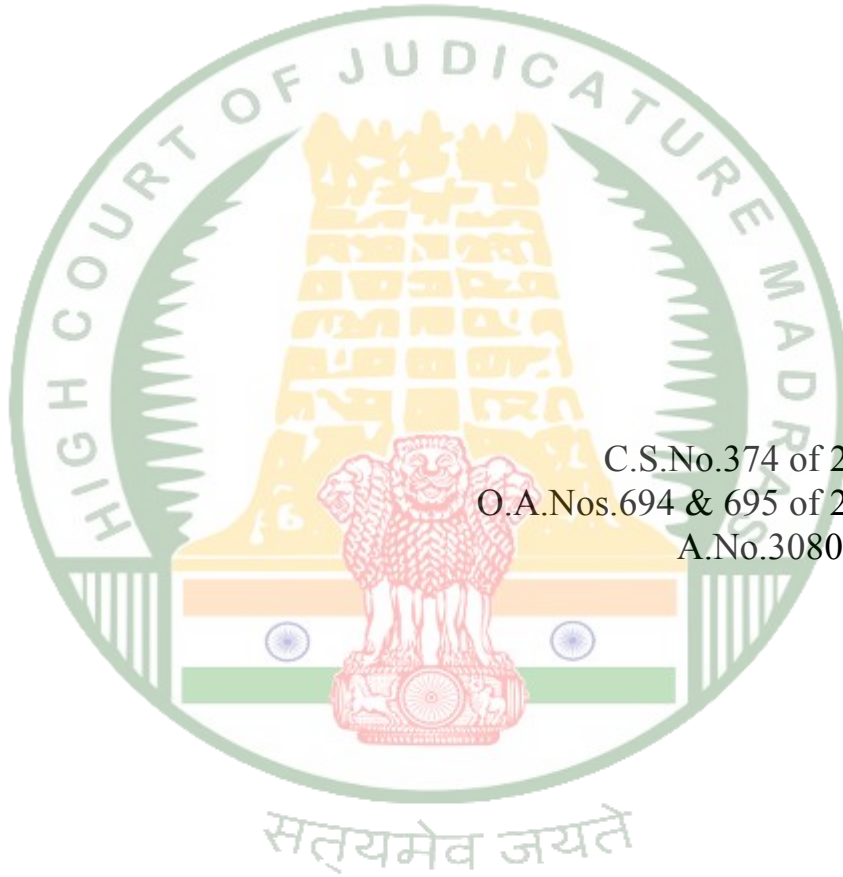


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