

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.03.2021

Pronounced on : 29.04.2021

CORAM

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

O.A.Nos.624 & 625 of 2020
in C.S.No.329 of 2020

1. Dr.K.Jacob
2. Mr.Cherian Abraham
3. Mr.Anu Varghese
4. Mr.John Joseph

... Applicants/Plaintiffs

Vs.

1. The Madras Medical Mission,
(a Society Registered under the Tamil Nadu
Societies Registration Act, 1975),
Having its registered office at:
No.4-A, Dr.J.Jayalalitha Nagar,
Mogappair, Chennai – 600 037.

2. Mr.M.M.Phillip,
Hon. Secretary (Interim),
The Madras Medical Mission,
Residing at No.29, College Road,
Chennai – 600 006.
- Respondents/Defendants

...

Prayer in O.A.No.624 of 2020: This application is filed under Order XIV Rule 8 of the Original Side Rules read with Order XXXIX Rule 1 & 2 of CPC, praying to grant interim injunction restraining the respondents from implementing the notice dated 19.10.2020 wherein the applicants have been suspended from the privileges of membership in the 1st respondent society pending disposal of the Civil Suit.

Prayer in O.A.No.625 of 2020: This application is filed under Order XIV Rule 8 of the Original Side Rules read with Order XXXIX Rule 1 & 2 of CPC, praying to grant interim injunction restraining the Governing Board of the 1st respondent society from taking any decision regarding the functioning of the 1st respondent society other than to conduct the elections to fill up the seven (7) vacant seats in the Governing Board pending disposal of the Civil Suit.

For Applicants : Mr.P.S.Raman, Sr. Advocate
in both cases for M/s.Hari Radhakrishnan

For Respondents : Mr.Silambannan, Sr. Advocate (for R1)
in both cases for Mr.V.Hallel Ben.
Mr.AR.L.Sundaresan, Sr.Advocate
for Mr.Thomas T.Jacob (for R2)

COMMON ORDER

The plaintiffs in C.S.No.329 of 2020 have filed these two applications for the following reliefs.

(i) In OA No.624 of 2020, the applicants/plaintiffs have prayed for an order of interim injunction restraining the respondents/defendants from implementing the notice dated 19.10.2020, wherein the applicants/plaintiffs have been suspended from the privileges of membership in the 1st respondent/1st defendant society pending disposal of the Civil Suit.

(ii) In O.A.No.625 of 2020, the applicants/plaintiffs have prayed for an order of interim injunction restraining the Governing Board of the 1st respondent/1st defendant society from taking any decision regarding the functioning of the 1st respondent/1st defendant society other than to conduct the elections to fill up the seven (7) vacant seats in the Governing Board, pending disposal of the Civil Suit.

Case of the Applicants/Plaintiffs:

2. The gist of the averments found in the affidavits filed by the applicants/plaintiffs in support of these applications, is as follows:

(i) The 1st respondent/1st defendant is a Society registered under the provisions of the Tamil Nadu Societies Registration Act, 1975, with registration No.1 of 1982. The bye-laws in respect to the 1st respondent/1st defendant society contains extensive provisions regarding the objects of the 1st respondent/1st defendant society, membership and qualifications, register of members, election, etc. The 1st respondent/1st defendant society was established in the year 1982, with the object of establishing and running hospitals, dispensaries and other similar institutions.

(ii) The management and control of all the affairs and funds of the 1st respondent/1st defendant society is vested in the Governing Board which has a maximum of 21 members duly elected from among the life members of the 1st respondent/1st defendant society. 1/3rd of the members of the Governing Board viz., 7 members, retire every year by rotation and the election to fill up these seats is held during the Annual General Body meeting of the Board, in case more than seven nominations are received.

(iii) The applicants/plaintiffs are erstwhile Governing Board members of the 1st respondent/1st defendant society. During the term of the 1st applicant/1st plaintiff as the Hon. Secretary of the 1st respondent/1st defendant society, a requisition to call for an Extra-Ordinary General Body meeting was received to consider various items including the presentation of the report of a 'money committee'. In the said meeting it was alleged that during the presentation of the 'money committee' report that several irregularities had been found and immediately on the spot, two resolutions viz., (i) to appoint an Audit committee and (ii) to suspend the 1st and 2nd applicants/plaintiffs from all positions in the society were proposed. Thereafter, 60 members of the 1st respondent society submitted a requisition to call for an Extra-Ordinary General body meeting to recall the illegal resolutions passed on 22.06.2019. In this regard, various litigations are pending before this Court.

(iv) The 2nd respondent/2nd defendant issued notice dated 20.02.2020 to the 1st applicant/1st plaintiff alleging that the 1st applicant/1st plaintiff had

misrepresented to various persons that he continued as the Hon. Secretary of the Society and signed a Memorandum of Understanding with Johnson Lifts. Thereafter, the 2nd respondent/2nd defendant issued notice dated 20.02.2020 to the 1st and 2nd applicants/plaintiffs alleging unauthorised property transactions including sale and purchase of properties that were alleged to have been carried out without the knowledge of the Governing Board. Both notices were suitably replied by the applicants/plaintiffs vide response letter dated 23.02.2020 by denying the allegations levelled against them.

(v) The 2nd respondent/2nd defendant issued another notice dated 21.04.2020 to the 1st and 2nd applicants/plaintiffs alleging that interest free loans had been advanced to some doctors working in the hospital run by the society without authorization. Further, once again a notice dated 25.08.2020 has been issued to the 1st and 4th applicants/plaintiffs alleging that they have not remitted the hostel and tuition fees collected from the students of the Medical college run by the society at Puducherry. One another notice has also been issued by the 2nd respondent/2nd defendant to the 1st and 2nd applicants/plaintiffs on 01.09.2020

alleging that expenses related to the construction of a Church were not accounted properly.

(vi) The 2nd respondent/2nd defendant issued notice dated 12.10.2020, to the applicants 1, 2 and 4/plaintiffs alleging retention of certain amount paid as stipend to post-graduate students studying at the Medical college and calling upon them to submit their explanation by 15.10.2020. All the notices issued by the 2nd respondent/2nd defendant, were suitably replied by the applicants/plaintiffs on various dates.

(vii) The intention behind the 2nd respondent/2nd defendant in issuing repeated notices to the applicants/plaintiffs, receiving their reply and then keeping quite only became apparent thereafter, when the 2nd respondent/2nd defendant issued notice questioned in the present suit dated 19.10.2020, suspending the applicants/plaintiffs from the privileges of membership of the 1st respondent/1st defendant society for six months starting from 15.10.2020 including the right to attend the General Body meetings of the society and to vote or contest elections or

hold any positions in the society. The said actions were said to have been considered by the Governing Board in its meeting held on 15.10.2020 at the GRT Grand Hotel, Chennai – 17, with just eight members of the Governing Board being present.

(viii) The suspension is not in the nature of any punishment. After issuing the charge memo, the applicants/plaintiffs will be given a reasonable opportunity to respond and they may request the management committee for copies of the relevant documents but the management committee may refuse such documents if in its opinion, they are not relevant or contained privileged or confidential information.

(ix) The Governing Board itself has assumed the power to suspend members not only from any position on the Board but from the privileges of their membership itself including to attend General Body meeting and to vote or contest in elections even though no such power is granted anywhere in the Tamil Nadu Societies Registration Act, 1975.

(x) All the notices issued by the 2nd respondent/2nd defendant, clearly shows that the same has been issued with an extremely prejudiced and biased mind only with the intent of ensuring that the applicants/plaintiffs are painted with the colour of illegality. A perusal of notice dated 19.10.2020 will show that the reply sent by the applicants/plaintiffs have not been considered by the Governing Board before the decision to suspend the applicants/plaintiffs were taken.

(xi) The meeting of the Governing Board was supposed to be held in September 2020 as per the original schedule wherein the same agenda was to be considered. But a unilateral decision was taken to postpone the Governing Board meeting to 15.10.2020 without ascribing any reason. This was done only to ensure that the term of 7 members of the Governing Board expires as per schedule at the end of September.

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(xii) There is absolutely no rhyme or reason behind the reason for suspension of the applicants/plaintiffs quoted in the impugned notice dated

19.10.2020. The 2nd respondent/2nd defendant was appointed only as the 'interim Secretary' of the Governing Board.

(xiii) One of the members of the society who attended the Governing Board on 15.10.2020 viz., Mr.E.John Thomas was ineligible to attend the meeting as he was elected to the Governing Board in October, 2017 and his term expired on 03.10.2020. In spite of the same, he was allowed to attend the meeting and even cast his vote as he belonged to the 2nd respondent's group. Therefore, it is apparent that the decision taken by the Governing Board as communicated by the 2nd respondent/2nd defendant is ex facie illegal and taken only with the ulterior motive of hijacking the 1st respondent/defendant society to serve the interests of the 2nd respondent/2nd defendant and his coterie. Therefore, the applicants herein prayed for the above referred relief.

Counter of the Respondents:

3. One Mr.M.M.Philip, who is the present Hon. Secretary of the 1st respondent/defendant Society as well as the 2nd respondent/2nd defendant has filed

two similar counter affidavits, viz., one on behalf of 1st respondent society and the other in his individual capacity. The gist of the averments found in both the counter affidavits, is as follows:

(i) The 2nd respondent/2nd defendant viz., Mr.M.M.Philip, is the present Hon. Secretary of the Madras Medical Mission (MMM). He was unanimously elected to the position at the meeting of the Governing Board held on 22.01.2020. In the instant case, the 1st applicant/1st plaintiff, who is the former Hon.Secretary of the 1st respondent/1st defendant society and the former Chairman of the medical college, PIMs at the Union Territory of Puducherry, along with the 2nd applicant/2nd plaintiff, who is the former Hon.Treasurer, had committed several irregularities amounting to a gargantuan sum of Rs.186 Crores during their tenure as office bearers, for which the General Body had at an EGM held on 22.06.2019, suspended them from their official positions pending enquiry. The 3rd applicant/3rd plaintiff, was a former Interim Secretary of the 1st respondent Society and the 4th applicant/4th plaintiff, was the Treasurer of the 1st respondent Society till 22.01.2020.

(ii) The temporary actions including suspension from holding positions of power during an enquiry, clearly does not come under the ambit of ratification by the General Body. The contention that all matters of relevance relating to the functioning and administration of the Society, were brought to the attention of the Governing Board to be considered and decided upon, is strongly denied. The enquiry against the 1st and 2nd applicants/plaintiffs was initiated at the Extraordinary General Meeting (EGM) of the 1st respondent society held on 17.09.2017, by appointing a Money Committee to enquire into the affairs of these office-bearers. The alleged irregularities are all related to the medical college viz., the Pondicherry Institute of Medical Sciences (PIMS).

(iii) The two decisions taken at the meeting were ordinary resolutions which were taken to protect the larger interests of the Society and required only a majority vote of members present and voting. In the Governing Board Meeting held on 12.02.2020, the matters relating to the following items, were alone discussed.

(i) Unauthorised property transactions

(ii) Misrepresentation as Secretary

(iii) Unauthorised interest-free loan of Rs.1.00 Crore given by the 1st applicant.

(iv) Non-Remittance of Tuition and Hostel Fees collected by the applicants.

(v) Expenses incurred by PIMS for the Donated church at PIMS

(vi) Non-disbursement of Stipend to PG Students.

(iv) The 2nd respondent/2nd defendant was duty bound to enquire into these affairs by issuing notices to the ex-officio bearers concerned, who happens to be the applicants/plaintiffs, as the Chief Executive of the 1st respondent society as empowered in its Bye-Law 73. It is the duty of the Hon.Secretary of the 1st respondent/1st defendant Society to bring these matters to the notice of the Governing Board. Therefore, the aforesaid six matters had to be brought as Item No.14 in the Agenda of the Governing Board Meeting held on 15.10.2020 and had informed all the members of the Governing Board eligible to attend the meeting. The contention of the 1st applicant/1st plaintiff that only eight members attending

the meeting does not invalidate the decisions taken thereon.

(v) Bye-Law 62 of the Madras Medical Mission (Society) enables the Governing Board to initiate appropriate actions including suspension, as and when or if needed, which may, after the completion of a due process, lead to the decision for suitable punishment, ratified by the General Body.

(vi) The Governing Board did not jump to any hasty conclusions with malafide intentions to put the applicants/plaintiffs to their current predicament which is clearly the result of their own making. The Governing Board shall have the power as per the Bye-Law 62 to duly penalise any member, including debarring from holding any elected position for a specific period for permanently removing from the rolls, for not following the rules and regulations of the Society etc.

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(vii) There is no illegality in taking the decision of suspending the

applicants/plaintiffs in view of the gravity of the charges against them pending enquiry to be conducted by a Retired Judge. Under Bye-Law 89, all decisions taken by the majority of the members present and voting is valid. Further, as per Bye-Law 87, all decisions taken by the Board or the General Body shall be valid if so, declared by the President thereof even though a flaw. Accordingly, it is necessary to vacate the interim injunction dated 27.11.2020 granted by this Court and dismiss these applications with costs.

Rejoinder of the Applicants/Plaintiffs:

4. In reply to the counter affidavits filed by the respondents/defendants, the applicants/plaintiffs have filed their rejoinder, wherein they state as follows:

(i) The 2nd respondent herein/2nd defendant was only appointed as the Interim Secretary of the 1st respondent Society and therefore, he is not authorised to take disciplinary action against the applicants/plaintiffs. The report given by the Money committee was never discussed or approved by the Governing Board. The respondents/defendants do not have any power to suspend the members of the

Society, more so from even exercising their right to vote.

(ii) The meeting held on 22.06.2019 has not been concluded till date. The 2nd respondent/2nd defendant and his gang has completely and repeatedly violated every established principle of democracy and governance of a Society till date to ensure that the control of their Society remains in their hand contrary to the wishes of the majority of the members of the Society. The 1st applicant/1st plaintiff has already explained in details regarding the alleged 'mis-representation' to M/s.Johson Lifts. It is curious to note that instead of answering about how the huge donation of Rs.3.3 crores was given to the society only due to the efforts put in by and the personal relationship of the 1st applicant and about how the Society has only gained from the transaction and not lost a single paise, the 2nd respondent/2nd defendant has conveniently only focused on the alleged misrepresentation to make further allegations.

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(iii) The applicants/plaintiffs have already submitted a detailed explanation regarding the circumstances in which loans were extended to the employees. The sheer prejudice and bias on the part of the 2nd respondent/2nd defendant is apparent from the fact that the 2nd respondent/2nd defendant will without shame cite the pandemic as an excuse to explain his actions while being in control of the society but will call the applicants/plaintiffs who have no access to records as evasive when they cite the pandemic to explain their inability to submit a detailed response. The cost of construction of the Church is not merely Rs.65 Lakhs that went from the coffers of the society and that even this Rs.65 lakhs was donated by various members of the Society.

(iv) In minutes of meeting concluded on 15.10.2020 and in the notice issued on 19.10.2020 not one single reference has been made to the various explanations submitted by the applicants/plaintiffs.

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Submissions on behalf of the applicants/plaintiffs:

5. Mr.P.S.Raman, learned senior counsel appearing on behalf of the counsel for the applicants/plaintiffs would contend that the suspension order issued to the applicants are vitiated by malafides. Though, the applicants/plaintiffs sought time to give a detailed reply for the notices received by them, without considering the same, the Governing Board suspended the applicants/plaintiffs, which is a clear malafide action of the 1st respondent/1st defendant.

6. Learned senior counsel would further contend that the 1st respondent/1st defendant society does not confer any power to the Governing Board to suspend any member of the society. He would specifically contend that Bye-Law 62 does not confer any power on the Governing Board to suspend the members. Further, it is the case of the applicants/plaintiffs that after issuing the suspension notice, the same was not approved by the Governing Board of the Society.

7. Learned senior counsel would further contend that without any

express power to suspend the member, the suspension order dated 19.10.2020 is clearly arbitrary and illegal. The actions of the respondents/defendants are malafide for the reason that the decision to suspend the applicants/plaintiffs was deferred deliberately from September 2020 to 15.10.2020. This was done only to ensure that the term of seven members of the Governing Board expires as per schedule at the end of September, 2020 and these seats will be kept vacant till the elections are conducted. Suspending the applicants from membership, not only are they being denied the rights of normal life members but the action of the respondents/defendants has also infringed the basic right of the applicants/plaintiffs to contest or vote in the elections of the society.

8. Learned senior counsel has specifically submitted that in paragraph No.6 of the impugned suspension notice dated 19.10.2020, the 2nd respondent/defendant has communicated that during the period of suspension the applicants/plaintiffs do not have any right to attend the general meetings of the society and to vote or contest elections. Further, there is absolutely no indication that the replies filed by the applicants/plaintiffs were discussed and there is not

even a prima facie finding on the merits of the matter. Therefore, according to him, the impugned suspension notice is clearly violative of the principles of natural justice.

Judgments relied on by the applicants/plaintiffs:

9. In support of his submissions, learned senior counsel appearing for the applicants/plaintiffs relied on the following judgments.

- (i) TP Daver Vs. Lodge Victoria No.363 S.C.Belgaum and others, [AIR 1963 SC 1144]
- (ii) V.P.Gidroniya Vs. The State of Madhya Pradesh and others, [MANU/SC/0502/1970]
- (iii) Management of Hotel Imperial, New Delhi and Ors Vs. Hotel Worker's Union [MANU/SC/0116/1959]

Submissions on behalf of 1st respondent/1st defendant Society:

10. In response to the submission made by the learned senior counsel appearing for the applicants/plaintiffs, the learned senior counsel appearing for the 1st respondent/1st defendant society would contend that the interim relief sought by the applicants/plaintiffs, and the final relief prayed in the Civil Suit are similar, and therefore, if the interim injunctions are granted, it will virtually amount to allowing the main suit itself. He would further submit that as per Bye-Law 62, the

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Governing Board shall have the power to duly penalise any member including debarring them from holding any elected post or permanently removing them from the rolls. More than that, the Governing Board meeting held on 15.10.2020 was attended only by 7 members, which is sufficient to pass a resolution under Bye-Law 86.

11. The learned senior counsel appearing for the 1st respondent/1st defendant would further submit that in the elections for the year 2020-21, the 1st applicant/plaintiff has alone filed his nomination. But for the reason that the applicants and their proxies filed multiple suits, the election process were stalled and therefore, it cannot be said that the 1st respondent/1st defendant committed a malafide act. Further during the relevant point of time, the elected members of the Governing Board elected the 2nd respondent/2nd defendant as the Hon. Secretary and therefore, under Section 2(g) of the Tamil Nadu Societies Registration Act, the 2nd respondent/2nd defendant, is a duly elected officer of the society.

12. According to the learned senior counsel, the Court would normally not interfere with the order of suspension and also since the applicants/plaintiffs

are suspended for the serious allegations contemplated, it cannot be said after violating the principles of natural justice, they have been put under suspension. According to him, the applications filed by the applicants/plaintiffs, are liable to be dismissed.

Judgments relied on by the 1st respondent/1st defendant:

13. In support of his submissions, learned senior counsel appearing for the 1st respondent/1st defendant relied on the following judgments.

- i. V.P.Giridroniya Vs. State of Madhya Pradesh & Ors [CDJ 1970 SC 247]
- ii. U.O.I. Vs. Ashok Kumar & Ors [CDJ 2005 SC 780]
- iii. Union of India Vs. Modiluft Ltd [2003 (6) SCC 65]
- iv. ISKC Vs. Adridharan Das [2003 SCC Online Cal 142]
- v. L.K.Verma Vs. HMT Ltd and Ors [2006 (2) SCC 269]
- vi. State of Orissa Vs. Bimal Kumar Mohanty [CDJ 1994 SC 1023]
- vii. Sunil Madhukar Kulkarni Vs. State of Maharashtra [1998 SCC OnLine Bom 827]
- viii. Ashok Kumar Vs. SBI Officers Association (Delhi Circle) [2013 SCC OnLine Del 1631]
- ix. A.C.D'Mello Vs. Shipping Corporation of India [1987 SCC OnLine Bom 397]
- x. Sri. Kailash Nath Balika Vidyalaya Inter College Vs. State of U.P. [2012 SCC OnLine All 535]

Submissions on behalf of the 2nd respondent/2nd defendant:

14. In support of the submissions made by the learned senior counsel appearing for the 1st respondent, Mr.ARL Sundaresan, learned senior counsel appearing on behalf of the counsel for the 2nd respondent would submit that before the suspension notice, dated 19.10.2020 as per Section 87 of the Bye-Law, the President of the Society, HG Dr.Yuhanon Mar Diascoros declared that the motions were passed and affixed his signature to evidence the passing of the resolutions and the 1st applicant/1st plaintiff Dr.K.Jacob and the 2nd applicant/2nd plaintiff Mr.Churian Abraham were suspended from the Governing Board which suspension has not been challenged by them in any Court as of till date. Further, in this regard, litigations are initiated and the same are pending before this Court. In otherwise, in view of the Bye-Laws 40 and 62, the seven (7) members of the Governing Board, by following the natural justice, suspended the applicants/plaintiffs, alleging that they have committed serious irregularities, amounting to Rs.186.63 Crores.

15. Further, the order of suspension is the inherent power of the

Governing Board as stipulated in the Bye-laws and therefore, when grave allegations of misconduct is alleged, the Governing Board have the powers to suspend any member. Further, the allegations of malafide levelled by the applicants, has to be proved beyond doubt only during the time of enquiry and not now.

16. According to the learned senior counsel, the applicants/plaintiffs have not made a prima facie case and balance of convenience is also in favour of the respondents/defendants. Therefore, the order of suspension dated 19.10.2020 is well within the parameters laid in the Bye-Law and therefore, the interference of this Court in the order of suspension is not necessary.

Judgments relied on by the 2nd respondent/2nd defendant:

In support of his submissions, learned senior counsel appearing for the 2nd respondent/2nd defendant relied on the following judgments.

1. V.P.Giridroniya Vs. State of Madhya Pradesh & Ors [CDJ 1970 SC 247]
2. R.P.Kapur Vs. Union of India [1963 SC 104]

3. U.P.Singh Vs. Punjab National Bank [CDJ 2011 DHC 1277]
4. L.K.Verma Vs. HMT Ltd [2006 (2) SCC 269]
5. T.Cajee Vs. U.Jomanik Siem & Another [CDJ 1960 SC 102]
6. ISKC Vs. Adridharan Das [2003 SCC Online Cal 142]
7. State of Orissa Vs. Bimal Kumar Mohanty [CDJ 1994 SC 1023]
8. U.O.I. Vs. Ashok Kumar & Ors [CDJ 2005 SC 780]
9. M/s.Dharmpur Sugar Ltd Vs. State of Utranchal & Ors. [CDJ 2007 SC 1014]
10. Chandra Prakash Singh Vs. Purvanchal Gramin Bank Ors. [CDJ 2008 SC 264]
11. Shyam Lal Yadav & Ors. Vs. Smt.Kusum Dhawan & Ors. [CDJ 1978 SC 266]
12. Union of India Vs. Deepak Niranjana Nath Pandith [CDJ 2020 SC 164]

Discussion:

18. The submissions made by the learned counsel appearing on either side shows that the following factors are not disputed on either side.

19. The 1st applicant Dr.K.Jacob and his father late K.V.George, have been in the position of Hon.Secretary of the society for around 20 years. The 1st applicant was elected as a Hon.Secretary on 15.01.2009 and the 2nd applicant

Mr.Cherian Abraham was elected as Hon.Treasurer on 09.10.2010. The 3rd applicant viz. Mrs.Anu Varghese was elected as Interim Secretary on 22.06.2019

and was in the office till 22.01.2020. Further, the 4th applicant Mr.John Joseph was elected as Treasurer on 22.06.2019 and was in office till 22.01.2020.

20. In the Extra-ordinary General Meeting held on 17.09.2017, a Money Committee was formed to enquire into all money matters of the Society and one Dr.Suja Issac, a member of the Governing Board, is appointed as its Convener. The Money committee did a thorough enquiry and submitted a report to the Governing Board. Further, the said report was tabled in the Extraordinary General Meeting held on 22.06.2019. In the report, the enquiry committee pointed out the prima facie irregularities amounting to about Rs.186.63 Crores. Thereafter, on that date itself, the 1st and 2nd applicants/plaintiffs were suspended, in furtherance of Section 87 of the Bye-Laws. Further, the suspension order was not challenged in any Court till date.

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21. When at the time the 2nd applicant/2nd plaintiff attempted to call an Extraordinary meeting to recall the suspension dated 22.06.2019, one of the

members filed a suit in C.S.No.523 of 2019 and obtained an interim injunction on 06.09.2019 in O.A.No.816 of 2019, prohibiting the 2nd applicant/2nd plaintiff from conducting an Extraordinary General Meeting on 08.09.2019 and the said order is still in force. Challenging the same, the 2nd applicant/2nd defendant filed O.S.A.No.238 of 2019 and the same is pending with the Division Bench of this Court.

22. Subsequent to that, in the election held on 03.11.2019, the 2nd respondent/2nd defendant in this application, Mr.M.M.Philip was elected as the Hon.Secretary and one Mr.John Thomas was elected as Hon.Treasurer. The new Governing Board, after adding some more allegations against the applicants/plaintiffs had issued four show cause notices on various dates viz., 20.02.2020, 22.04.2020, 25.08.2020 and 01.09.2020. In the said notices, the 2nd respondent, on behalf of the 1st respondent/1st defendant Society made the following allegations against the 1st applicant.

- (i) He misrepresented before the public that he is the Hon.Secretary of the 1st respondent society.
- (ii) He involved in unauthorised property transactions in connection with

1st respondent/1st defendant society.

(iii) He had granted unauthorised interest free loan to Doctors to the tune of Rs.1 Crore.

(iv) He has not remitted the tuition and hostel fees collected from the students.

(v) He has received uncountable contribution towards the construction of the Church.

(vi) He has retained the stipend, which is payable to the PG students.

After the receipt of the said notices, all the applicants/plaintiffs herein have sent a reply notice denying the allegations, which levelled in the notices. Only thereafter, on 19.10.2020, the 2nd respondent issued a suspension notice and afterwards, challenging the same, the applicants/plaintiffs are before this Court.

23. In the said circumstances, the submission made by the learned counsels appearing on either side reveals the fact that the 1st respondent Society was registered under the Tamil Nadu Societies Registration Act, 1975 (TN Act 27/75). It is also admitted on either side that the 1st respondent society has its own Bye-law and therefore, each and every act of the 1st respondent/defendant society will be governed only in accordance with the bye-law.

24. Further, on going through the entire submissions made by the learned senior counsel appearing for the applicants/plaintiffs, it seems that the respondents 1 and 2 without having any power to take disciplinary action against the members, concluded the Governing Board Meeting on 15.10.2020 and issued the impugned letter, wherein the applicants herein are informed that they were suspended from the privileges of the membership. According to him, the only authority, who is having the power to suspend the members has to pass an order of suspension. Further, in this regard, he relied on the judgment of our Hon'ble Apex Court in *TP Daver Vs. Lodge Victoria No.363 S.C.Belgaum and others*, reported in **AIR 1963 SC 1144**, wherein it was held as follows:

“4. The source of the power of associations like clubs and lodges to expel their members is the contract on the basis of which they become members. This principle has been restated by Lord Morton in *Bonsor v. Musicians' Union*, (LR 1956 AC 104). There, one Bonsor, who became a member of a trade union, was expelled. In that context Lord Morton observed :

"When Mr. Bonsor applied to join the respondent union, and his application was accepted, a contract came into existence between Mr. Bonsor and the respondent, whereby Mr. Bonsor agreed to abide by the rules of the respondent union, and the union impliedly agreed that Mr. Bonsor would not be excluded by the union or its officers otherwise than in accordance with the

rules".

This contractual origin of the rule of expulsion has its corollary in the cognate rule that in expelling a member the conditions laid down in the rules must be strictly complied- with. In *Maclean v. The Workers' Union*, (LR (1929) 1 Ch D 602, 623)), the contractual foundation of the power is described thus :

"In such a case as the present, where the tribunal is the result of rules adopted by persons who have formed the association known as a trade union, it seems to me reasonably clear that the rights of the plaintiff against the defendants must depend simply on the contract, and that the material terms of the contract must be found in the rules".

Proceeding on that basis, the learned Judge observed:

"It is certain, therefore, that a domestic tribunal is bound to act strictly according to its rules and is under an obligation to act honestly and in good faith."

The same idea was expressed by the Calcutta High Court in *Ezra v. Mahendra Nath Banerji* (ILR (1946) 2 Cal 88) thus :

"..... Where the rule provides in any particular respect that some condition must be fulfilled, then that condition must be strictly complied with, since the power of expulsion is itself dependent on the terms of the rule.""

25. Hence, in view of the above said observation, it is made clear that only the competent authority is having the power to suspend the members of the society. In otherwise, the judgments relied on by the applicants/plaintiffs

viz.*V.P.Gidroniya Vs. The State of Madhya Pradesh and others*, reported in MANU/SC/0502/1970 and the *Management of Hotel Imperial, New Delhi and Ors Vs. Hotel Worker's Union* reported in MANU/SC/0116/1959, are the cases decided in respect to the Master-Servant relationship and therefore, since the matter pertains to the applications, is governed by Tamil Nadu Societies Registration Act, 1975, those judgments are not at all relevant to the case in hand.

26. Per contra, the submissions made by the learned senior counsel appearing for the 1st respondent/1st defendant would be that the charges levelled against the applicants/plaintiffs are very serious in nature. During the relevant point of time, nearly 186 Crores were swindled in the society. Further, the learned senior counsel would submit that taking advantage of his position, the 1st applicant herein/1st plaintiff has involved in serious allegations and therefore, in order to save the object of the society, the Governing Board has decided to suspend the applicants/plaintiffs and therefore, it cannot be said that with malafide intention, the Governing Board suspended the applicants.

27. Now, on considering the said submission with the relevant records, for deciding the said issue, it is necessary to see Bye-Laws 62 to 64 and 86, which reads as follows:

“62. The Board shall have the power to duly penalise any member, including debarring from holding any elected position for a specified period or permanently removing from the rolls, who does not follow the rules and regulations of the Society or who has not paid the membership fee, subscription or any other contribution as decided from time to time by the General Body or for any other reason the Board deems fit. In all such matters, the decision of the Board shall be ratified by the General Body.

63. The Board shall have power to raise monies on Security or otherwise with or without interest from Banks, Financial Institutions, Companies, Individuals and others.

64. The Board shall have the powers necessary for carrying out the objects and for the management of the activities of the Society.

86. The Governing Board shall meet atleast once in every two months and there shall be at least six such meetings in a year, and for the meetings of the Board quorum shall be seven members.”

28. Now, on a combined reading of the Bye-Laws 62 to 64 and 86, will make it clear that the Governing Board, which is having the quorum of seven (7) members, is having the power to penalise any member including debarring from holding any elected position. Only in view of the same, on 15.10.2010, eight (8) members of the elected body, decided to suspend the applicants/plaintiffs and accordingly, they issued notice dated 19.10.2020. Further, in respect to the subject matter of Bye-Laws, section 6(k) of the Tamil Nadu Societies Registration Rules, 1978, reads as follows:

“(k). removal of members the circumstances under which members could be removed from the rules and the procedure for such removal and appeal,if any, against such removal;”

Therefore, the issuance of suspension notice, is only in accordance with the Bye-Law.

29. More than that, in a case of *International Society for Krishna Consciousness Vs. Adridharan Das*, reported in 2003 (2) Cal LJ 310, the Calcutta High Court, has held as follows:

“58. Such power is derived by the Governing Body not only from said Rules which provide that the Bureau is vested with all powers necessary to exercise proper administration and functioning of the Society and all matters incidental thereto, but also because of the above-mentioned provisions of the rules making all branches, persons and officers subject to the control of the Bureau and disciplinary action and the Bureau is vested with the power to remove, appoint, replace or change any officer of the Branch. The power to take all disciplinary actions, to remove, replace or change an officer obviously will include power to suspend an officer of the Society.”

30. Further, in the judgment in ***State of Orissa Vs. Bimal Kumar Mohanty***, reported in **CDJ 1994 SC 1023**, our Hon'ble Apex Court has held as follows:

“14. On the facts in this case, we are of the considered view that since serious allegations of misconduct have been alleged against the respondent, the Tribunal was quite unjustified in interfering with the orders of suspension of the respondent pending inquiry. The Tribunal appears to have proceeded in haste in passing the impugned orders even before the ink is dried on the orders passed by the appointing authority. The contention of the respondent, therefore, that the discretion exercised by the Tribunal should not be interfered with and this Court would be loath to interfere with the exercise of such discretionary power cannot be given acceptance.”

31. Therefore, it is true in view of the above referred two judgments, the order of suspension is the inherent power of the Governing Board and also the said order normally should not be interfered with through an interim order.

32. In the said occasion, the further case of the applicants is that, in view of the Bye-Law 62, if the Board decides to penalise any member, including debarring from holding any elected position for a specified period, the same should be ratified by the General Body. But, here it is a case, the decision taken by the Board dated 15.10.2020, is not placed before the General Body and therefore, it cannot be said that the order of suspension issued by the 2nd respondent, is valid one.

33. Now, on considering the said submission with the relevant records, it is true that under the Bye-Law 62, if any member is penalised or debarred from the membership, it should be ratified by the General Body. In the said circumstances,

now on going through the impugned notice dated 19.10.2020, it was intimated to the applicants that they were suspended from the privileges of the membership in the Madras Medical Mission. Further, the said decision has been taken by the eight members of the Governing Board for the six serious allegations, which already narrated in this order.

34. Therefore, it is necessary to see whether the contents of the said notice amounts to penalise the applicants or not. In general, the word 'penalise' is nothing but awarding punishment. The clear meaning in respect to 'penalise' is to convict the person. But here it is a case, the applicants are issued only with the suspension notice. Therefore, it cannot be said that the applicants/plaintiffs are penalised by the Board. Accordingly, in view of Bye-Law 62, necessary approval of the General Body, is not necessary for suspending the applicants.

35. In this regard, in a case of **L.K.Verma and HMT Limited and others**, reported in **2006 (2) SCC 269**, it was held that

“the suspension as a punitive measure is different from suspension as an interim measure pending the holding of departmental enquiry.”

Accordingly, an order of suspension, pending enquiry is not a punishment. In this

case also, the stand of the 1st respondent is that he is ready to conduct enquiry against the applicants immediately and therefore, it was concluded that the applicants/plaintiffs are suspended only on pending enquiry. Therefore, in view of the above, I am of the opinion that the approval of the General Body, is not at all necessary for suspending the applicants.

36. Further, on going through the Bye-Law 40, it is made clear that the Management and control of all the affairs and funds of the Society shall be vested in the Board. More than that, in view of the Bye-law 86, for taking decisions, quorum of seven members alone sufficient. In this regard, it is not in dispute that while at the time of taking decisions in respect to the notice dated 19.10.2020, quorum of eight members have participated, even assuming that one of the member has unauthorisedly participated, only due to the same the resolution taken by the Governing Board cannot be said that the same is not valid one.

37. Accordingly, in view of the Bye-Laws 40, 64 and 86, the suspension order dated 19.10.2020, is valid in law.

38. Even assuming the bye-law pertains to the 1st respondent/1st defendant society, is not having any provision for taking disciplinary action against the member, in the said circumstances, it is appropriate to follow the procedure laid down in the Act viz., Tamil Nadu Societies Registration Act, 1975, in which Section 19 reads as follows:

“19. Members guilty of offences punishable as strangers:-Any member of a registered society who steals, purloins or embezzles any money or other property, or wilfully and maliciously destroys or injures any property of the registered society, or forges any deed, bond, security for money, receipt or other instrument whereby the funds of the registered society may be exposed to loss, shall be subject to the same prosecution, and, if convicted, shall be liable to be punished in like manner as any person who is not a member would be subject and liable to in respect of the like offence.”

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So based on the said provision also, the Governing Board is having the right to take disciplinary action against the members who commit a wrong towards the registered Society.

39. It is the one another submission of the learned senior counsel for the applicants/plaintiffs that the suspension order was issued by the respondents 1 and 2 with malafide intention only for the purpose of prohibiting the applicants in participating the elections. In this regard, it is the case of the respondents that for the election (i.e) 2020-2021, the 1st applicant herein is the only person, who filed nomination, but for various reasons, due to the institution of the suit, the said election is stalled.

40. Therefore, in the said circumstances, it cannot be said that the respondents 1 and 2 with ill motive and malafide intention, in order to prohibit the applicants in participating the election, have taken the decisions and issued the impugned order.

41. Further, in respect to the prayer sought for in O.A.No.625 of 2020, if the said relief is granted, the day-to-day functions of the 1st respondent/1st defendant society would be stalled.

42. One of the submissions made by the learned senior counsel for the 1st respondent is that, the prayer sought for by the applicants in these applications are the relief prayed in the main suit. According to him, since the main relief and ancillary relief, are one and the same, the applications filed by the applicants for the ancillary relief, cannot be maintainable. He relied on the judgment of our Hon'ble Apex Court, in ***Union of India Vs. Modiluft Ltd.***, reported in **2003 (6) SCC 65**, wherein our Hon'ble Apex Court has held as follows.

“16.... Be that as it may, since the relief as termed in the writ petition being a final relief, we think the same could not have been granted by the High Court at an interlocutory stage..... सत्यमेव जयते

17. Seen from any angle, we think the High Court has erred in granting the impugned relief to the respondent which in our opinion is in the nature of a final relief which on facts and circumstances of this case, without deciding the issues involved in the writ petition, could not have been granted. Therefore, we allow the appeal and set aside the impugned order. “

43. Now, applying the said principles set out in the above referred judgment with the facts of this present case, herein, the present applications have been filed for the relief of interim injunction restraining the respondents/defendants from implementing the notice dated 19.10.2020 and for the interim injunction restraining the Governing Board of the 1st respondent/1st defendant society from taking any decision regarding the functioning of the 1st respondent/1st defendant society.

44. On the other hand, the main relief is to declare the notice dated 19.10.2020 issued by the 2nd defendant as null and void. Therefore, on conjoint reading of the relief prayed in these applications and suit, are not at all be termed as one and the same.

45. However, as already observed due to the reason that the impugned order issued by the respondents, is in reference to the serious grave allegations and also the same is affirmed by this Court, it is not at all necessary to decide the said submission for deciding these applications.

46. In general, “the grant or refusal of a temporary injunction is subject to the following principles:

- a. *Prima facie* case of plaintiff's legal right;
- b. Balance of convenience in his favour.”

47. In this instant case, as already observed since the allegations levelled against the applicants are grave in nature, it cannot be said that the respondents have issued the impugned notice to the applicants with vindictive manner. Therefore, it cannot be said that *prima facie* case and balance of convenience are in favour of the applicants.

48. More than that, temporary injunction is discretionary, the person who approach the Court has to show some equities for exercising the discretion in his favour. In otherwise, the Court has every discretion to refuse to grant injunction in appropriate cases.

49. Accordingly, in the light of the above discussions, I am of the opinion that the applicants herein have not shown a *prima facie* case. Further, balance of convenience is also not in their favour. Accordingly, the applications (O.A.Nos.624 & 625 of 2020) filed by the applicants are dismissed.

50. However, considering the fact that since the respondents 1 and 2 are ready to commence the enquiry against the applicants, it is appropriate to direct the 1st respondent to complete the enquiry, within a period of three (3) months from today, by appointing a qualified person as an Enquiry Officer.

29.04.2021

Index:Yes/No.
ars / sri

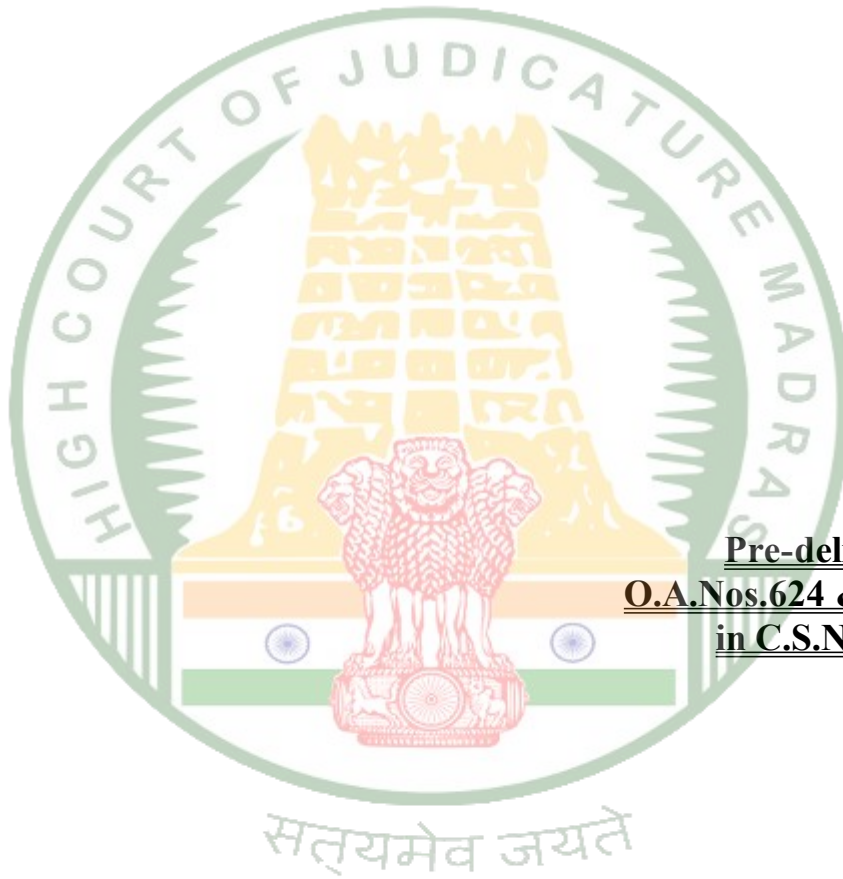
Note to office:
Issue order copy today.

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R.PONGIAPPAN, J.

ars



Pre-delivery order in
O.A.Nos.624 & 625 of 2020
in C.S.No.329 of 2020

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29.04.2021