IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.03.2021

Pronounced on : 17.04.2021

CORAM

THE HON`BLE MR.JUSTICE R.PONGIAPPAN

O.A.No.724 of 2020
in
C.S.No.384 of 2020

1. Mr.P.T.Selvakumar
2. Mr.N.Subash Chandra Bose
3. Mr.K.Rajan ... Applicants/Plaintiffs

Vs.

1. Tamil Film Producers Council,
Rep. By its Special Officer,
No.606, Anna Salai,
Chennai – 600 006.

2. The Election Officer,
Tamil Film Producers Council,
No.606, Anna Salai, Chennai – 600 006.

3. Mr.R.Radhakrishnan,
Proprietor of Maruthi Films,
No.135, Lakshmi Nagar, First Street,
Sridevi Kuppam, Valasaravakkam,
Chennai – 600 087.

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4. Mr.S.Chandra Prakash,
Proprietor of Sri Mishri Productions,
No.21/9, Cenotoph Road, 2nd Lane,
Raj Paris Apartments,
Ground Floor – B, Alwarpet,
Chennai – 600 018.

5. Mr.S.Kathiresan,
Proprietor of Shri Meenakshi Creations,
P.No.37, Bhakiya Lakshmi Nagar,
3rd Street, Near Velanganni School,
Alapakkam,
Chennai – 600 116. ... Respondents/Defendants

Prayer: This application is filed under Order XIV Rule 8 of the Original Side Rules read with Order XXXIX Rule 1 of Code of Civil Procedure, praying for the relief of Ad-Interim Injunction restraining the respondents/defendants 3 to 5 from acting as office bearers to the post of Honorary Secretary, Treasurer and Vice President pursuant to the election dated 22.11.2020 for the first respondent/defendant council pending disposal of the Civil Suit.

सत्यमेव जयते

ORDER

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The plaintiffs in C.S.No.384 of 2020 has filed this application, seeking the relief to grant an order of Ad-Interim Injunction restraining the

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respondents/defendants 3 to 5 from acting as office bearers to the post of Honorary Secretary, Treasurer and Vice President pursuant to the election dated 22.11.2020 for the first respondent/defendant council, pending disposal of the Civil Suit.

2. The case of the applicants in a nut shell, is as follows:

(i) The 1st respondent/defendant is a Society registered and governed under the Tamil Nadu Societies Registration Act, 1975. The 2nd respondent/defendant is the Election Officer of the 1st respondent/defendant, appointed by this Court, vide order dated 12.02.2020 in Application No.1685 of 2019 in C.S.No.165 of 2019.

(ii) By way of complying with the directions given by this Court, the 2nd respondent/defendant issued a notification dated 09.10.2020 on behalf of the 1st respondent/defendant, announcing the election schedule for electing Office Bearers and Executive Members of the Tamil Film Producers Council, i.e., the 1st respondent/defendant for the year 2020-2022. Along with the notification, the 2nd respondent/defendant issued the rules and guidelines governing the election along with the applications from 15.10.2020. The 2nd respondent/defendant affixed the

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rules and guidelines in the notification board of the 1st respondent/defendant Society on 15.10.2020.

(iii) In the notification, it has been specifically mentioned in Clause No.2 that as per Bye-Law 13 of the Tamil Film Producers Council, only those members who have produced and released a Tamil Straight Picture in the last five years, are eligible to seek and file nomination to contest in the election of Office Bearers.

(iv) Contrary to the guidelines given by the 2nd respondent/defendant, the 3rd, 4th and 5th respondents/defendants herein filed their nominations for the post of Honorary Secretary, Treasurer and Vice-President respectively. Respondents 3 to 5, do not possess the prescribed qualification. In this regard, the applicants/plaintiffs and several others have raised objection against the nomination filed by the 3rd to 5th respondents/defendants. In fact, one Singaravadivevelan made a representation in writing vide a letter dated 24.10.2020 to the 2nd respondent/defendant stating that the 3rd to 5th respondents/defendants, do not possess the prescribed qualification.

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(v) Since the 2nd respondent/defendant received some objections against the nominations of the said respondents, he had sought for the material information from M/s.QUBE Digital Service Providers through email pertaining to the movies released by the above respondents/defendants. After getting the reply from them and after receiving the objections from various persons, the 2nd respondent/defendant has published the final list of candidates, which contains the names of the 3rd, 4th and 5th respondents/defendants for the post of office bearers in the 1st respondent/defendant Society election for the year 2020-2022.

(vi) The above action of the 2nd respondent/defendant is arbitrary and biased. However, the respondents 3 to 5/defendants are elected as office bearers and therefore, the applicants herein/plaintiffs are constrained to file a suit before this Court and also file this application for the relief stated supra.

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3. In response to the averments found in the affidavit filed in support of the application filed by the applicants/plaintiffs, the 1st respondent/1st defendant filed a counter affidavit, wherein he has stated as follows:

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(i) The present suit has not been filed in a representative capacity. Further, the leave under Order I Rule 8 of CPC, has also not been obtained by the applicants/plaintiffs. On 26.04.2019, the Government had passed G.O.(Ms).No.56 dated 26.04.2019 had appointed the Special Officer for the Tamil Film Producers Council, wherein in the said proceedings, it was held that in view of the proven allegations, the Government have decided to supersede the committee of the Society viz., "Tamil Film Producers Council" and to appoint a Special Officer to manage the affairs of the said Society under the provisions of Section 34A of the Tamilnadu Societies Registration Act, 1975. Thereafter, the suit has been filed before this Court and then only this Court appointed the former Judge of this Court as an Election Officer, to conduct the election.

(ii) As per the Bye-Law, only after the lapse of six months from the date of enrollment, a new member of the Council becomes eligible for voting and for exercising the power of voting and contest in the election of office bearers and executive committee. Further any regular member who has produced and released a Tamil straight picture in the last five years is eligible to seek and file nomination

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and contest the election of office bearers. In the above rule, nowhere it is mentioned that the film released should be before the election notification. The interpretation of the applicants/plaintiffs are misconceived and untenable and devoid of merits and there is no express provision in the bye-law which says that the film release should be before the election notification. Therefore, accepting the nomination filed by the respondents 3 to 5, by the 2nd respondent is within the ambit of bye-law.

(iii) In the earlier elections, the retired judges of this Court had also followed the same procedure and accepted the nominations. Therefore, only in compliance of the order passed by this Court, the process of election has been completed and thereafter respondents 3 to 5, are elected as office bearers. If they are not allowed to function and discharge their duties as office bearers, it would cause grave prejudice and untold hardship to the 1st respondent/defendant society. The respondents 3 to 5, herein have assumed office on 02.12.2020, of their respective posts and they are at present discharging the duties as such and further on 31.12.2020, the Special Officer, appointed to manage the affairs of the Tamil film Producers Council had handed over all the charges to the newly elected

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office bearers. The pleadings in the suit do not project any cause of action. The allegations of the applicants/plaintiffs that the respondents 3 to 5 have not produced and released any Tamil Straight Picture in the last five years to the election notification dated 09.10.2020, issued by the 2nd respondent/defendant is stoutly denied as false and incorrect.

(iv) Due to Covid-19 Pandemic National Lock Down, Censor Board Office was closed by the Central Government and due to the same, the new films which were produced and ready for release, could not be censored due to the closure of Censor office. Only in the said circumstances, the film produced by respondents 3 and 4 are not censored immediately after production. Only on 14.08.2020 and 19.08.2020, they obtained censor certificates and thereafter immediately, after opening up of the theatres, they released their respective films. Now, the 2nd respondent/defendant has conducted election in the democratic way and declared the results. Therefore, the application filed by the applicants/plaintiffs in O.A.No.724 of 2020, is not maintainable.

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4. In the same way, opposing the contention raised by the applicants/plaintiffs, the 3rd respondent herein has filed a counter affidavit and the same was adopted by the respondents 4 and 5.

5. In the counter affidavit filed by the 3rd respondent/defendant, he has stated as follows:

(i) As per the Bye-Law of the 1st respondent/defendant, those members who have produced and released the Tamil Straight films in the last five years on or before 08.10.2020, alone are eligible to seek and file nomination to contest in the election of office bearers, is found not correct.

(ii) A plain reading of the above rule shows that a regular member who has produced and released a Tamil straight picture in the last five years is eligible to file nomination and further in the above rule, no where it is mentioned that that film release should be before the election notification.

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(iii) Further, when at the time, the application filed by the respondents 3 to 5, were under scrutiny, the present applicants/plaintiffs have not raised any objection and only one Singaravadivelan, has raised the objection. The 3rd respondent/defendant produced the Tamil Straight film called 'Ilaya Nila' for which on 07.05.2020 the 1st respondent/defendant issued a certificate that the said film is a straight version picture and issued letter for main censor purpose. Film publicity clearance certificate was also issued on 07.05.2020 and the censorship certificate has been granted on 14.08.2020.

(iv) Similarly, the 4th respondent/defendant has produced the tamil straight film called 'Social Media', for which on 18.03.2020, the 1st respondent/defendant issued the said certificate and issued a letter for main censor purpose. Film publicity clearance certificate was also issued on 18.03.2020 and censorship certificate has been granted on 19.08.2020. Further, the 5th respondent also has produced a tamil straight film called 'Simmanatham' for which censorship certificate has been granted on 06.09.2019. Thereafter, no issue was raised by the applicants/plaintiffs in this regard and the nominations were rightly accepted by the 2nd respondent.

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(v) Only after thorough scrutiny, the election officer had satisfied and accepted the names of the respondents 3 to 5/defendants. The bye-law of the 1st respondent/defendant Council does not contemplate that the Film should be released before the date of election notification. Only due to the closure of censor board, the respondents 3 to 5, could not obtain a censorship certificate immediately after the production of the film.

(vi) The objections raised by the Singaravadivelan was rejected by the election officer since in the bye-law, no where it was mentioned that the film release should be before the election notification and there is no such provision. As per the bye-law 13 of the Tamil Nadu Film Producers Council, it is very clear that any regular member who has produced and released a Tamil straight picture in the last five years is eligible to seek and file nomination and contest the election of office bearers. Without understanding the object of bye-law 13 the present application has been filed by the applicants/plaintiff. In the bye-law there is no provision that once election notice is issued subsequent film release by the contesting candidates is not valid. The respondents 3 to 5 had the requisite

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qualification and their nominations and their elections are valid. If the election is set aside, it would affect the functioning and affairs of the Council. There is no prima facie case. After knowing fully well that the applicants/plaintiffs had lost the battle, making unwanted allegations against the election officer, had ultimately filed the present suit.

(vii) It is necessary to decide at the time while interpreting a clause in bye-law, the Court will look into the purpose and object of framing such a clause. The object of bye-law 13 is that totally a producer who is inactive for a period of more than five years is not eligible to stand for the election. Bye-law 13, is clearly meant to prevent a person who has not produced a film, to stand for election. This rule has to be interpreted liberally and cannot stand in the way of a person who has produced the film which was released prior to the date of filing nomination. In the absence of any rule or specific provision that the film must have been released before election notification goes against the letter and spirit of the bye-law rule 13 of the 1st respondent/defendant Society. Thereby, the application filed by the applicants/plaintiffs do no have any merits.

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6. Heard Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the applicants/plaintiffs, Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the 1st respondent/1st defendant, Mr.L.Chandrakumar, learned counsel appearing for the 2nd respondent/2nd defendant and Mr.M.S.Krishnan, learned Senior Counsel, appearing for respondents 3 to 5 / defendants 3 to 5.

7. Here it is a case, it was admitted on either side that the election pertains to the present application had been conducted in view of the order dated 12.02.2020 passed by this Court in Application No.1685 of 2019 in CS No.1685 of 2019. Vide the said order, a former Judge of this Court viz., Hon'ble Mr.Justice M.Jayachandran, has been appointed as the Election Officer with a direction to conduct election in 1st respondent/1st defendant's council. It was further admitted that the 1st defendant's Council viz., Tamil Film Producers Council, was registered under the Tamil Nadu Societies Registration Act, 1975 and also under Rule 13 of Bye Law, qualification has been prescribed for participating in the election conducted in 1st respondent/1st defendant's council.

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8. The specific contention raised by the learned senior counsel appearing for the applicants/plaintiffs is that, respondents 3 to 5 herein, participated in the election without possessing the requisite qualification as per the rule prescribed in the bye-law. According to him, though the respondents 3 to 5 may be a capable person, but, they are ineligible for contesting in the election proceedings. The further submission of the learned senior counsel for the applicants/plaintiffs is that deciding the eligibility of respondents 3 to 5 /defendants, would be sufficient to decide this application.

9. On the other hand, Mr.T.R.Rajagopalan, learned senior counsel appearing for the 1st respondent/defendant would contend that the purpose of appointing a High Court Judge, as an Election Officer, is only for conducting a fair and proper election. In otherwise, the members who are all enrolled in the 1st respondent Council are all producers and therefore, it is not necessary to decide whether the respondents 3 to 5/defendants are eligible or ineligible for participating in the election. According to him, no prima facie case is made out in respect to the application filed by the applicants/plaintiffs. Further, the prayer sought for in the application, is also the prayer, in the main suit and therefore,

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deciding the application in favour of the applicants/plaintiffs would affect the trial proceedings and hence, at this stage, deciding this application in favour of applicants/plaintiffs, is unnecessary.

10. The learned senior counsel Mr.M.S.Krishnan, appearing on behalf of respondents 3 to 5/defendants would also approve the contention raised by the learned senior counsel appearing on behalf of the 1st respondent/1st defendant. He would further submit that Rule 13 found in bye-law is a vague one. More than that, a person cannot release a regular film within a period of seven days and of course for producing the film, minimum 6 to 8 months, is necessary. He would further contend that when at the time the election process are going on, the applicants herein/plaintiffs, did not raise any objection. One Mr.Singaravadivelan, alone raised the objection and after the declaration of results, on 09.11.2020, he has filed an application for the purpose of granting leave to institute the suit against the 5th respondent and thereafter, for the reasons best known to him, the said application has been withdrawn on 20.11.2020. Therefore, raising objection and filing the suit in the belated stage would in no way affect the rights having by the respondents 3 to 5.

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11. According to learned senior counsel appearing on behalf of respondents 3 to 5/defendants, only due to Covid-19 pandemic, the film produced by respondents 3 to 5, had not been sent to the censor board. Further, in respect to the same on 26.10.2020, the 2nd respondent herein, has caused a circular among the members of the 1st respondent council saying that the digital service provider (QUBE) have certified that all the three respondents have produced the film in their company name and after the completion of censor, they released the film on a fixed date. Therefore, the prima facie case and the balance of convenience are not in favour of the applicants/plaintiffs.

12. Now, on going through the entire submissions with relevant records, it is necessary to decide whether the prayer sought by the applicants/plaintiffs, in the suit and in the application, is one and the same. The prayer sought by the applicants/plaintiffs in the plaint pertaining to the present suit, is as follows:

> (a) Declaring that the election dated 22.11.2020 and the results announced on 24.11.2020 to the first defendant council in so far as the defendants 3 to 5 for the year 2020-2022, as null and void.

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(b) Permanent injunction restraining the defendants 3 to 5 from acting as office bearers to the post of Honorary Secretary, Treasurer and Vice President, pursuant to the election dated 22.11.2020 for the first defendant council.

13.Alongwith the suit, the applicants/plaintiffs have filed the present application for the following relief.

> "Ad-interim injunction restraining the defendants 3 to 5 from acting as office bearers to the post of Honorary Secretary, Treasurer and Vice President, pursuant to the election dated 22.11.2020 for the first defendant council pending disposal of the civil Suit."

14. Now, on going through the prayer sought by the applicants/plaintiffs, in both matters, of course, in respect to the relief of injunction, the applicants/plaintiffs have prayed the said relief both in the suit as well as in this application. But, on the other hand, the main relief prayed by the

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applicants/plaintiffs in the suit is to declare the election dated 22.11.2020 as null and void. Therefore, it cannot be said, both the relief prayed in the suit and the application, is one and the same.

15. The expression, 'main relief', takes almost every relief for which the suit is solely laid for. However, the expression, 'ancillary relief', has to be read in conjunction with the main relief i.e. it should be aiding and ancillary to the main relief. The ancillary relief can in a given circumstance be the main relief but not vice versa.

16. Herein also, the relief of injunction is the aiding factor for the relief of declaration and thereby, this Court is of the opinion that the prayer sought in the application would not constitute the main relief prayed in the plaint. Accordingly, the main submission made by the learned senior counsel appearing for the respondents/defendants is negatived and the same is decided against them.

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17. Secondly, in respect to the eligibility for participating in the election, as already observed, Rule 13 of the bye law is the guiding factor for deciding the

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issue whether the respondents 3 to 5 are the eligible persons or not for participating in the election. Now, on going through Rule 13 of bye-law, it reads as follows:

> "any new regular producer member after becoming a member in the council is eligible for voting and to exercise the power of voting and contesting in the election of office bearers and the date of enrollments. Any regular member who has produced and released a Tamil Straight picture in the last five years is eligible to seek and file nomination and contest the election of office bearers. All the other regular members who have not produced and realeased a Tamil Straight picture in the last 5 years is eligible to contest in the election of executive committee of the council only and not to the election of office bearers.

18. After incorporating the said rule, the 2nd respondent/defendant on 09.10.2020 issued a notification, wherein in respect to office bearers, eligibility has been fixed as follows:

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> "1.தலைவர், துணைத்தலைவர்கள், கௌரவ செயலாளர்கள், பொருளாளர் ஆகிய பதவிகளுக்கு போட்டியிடுபவர்கள் வேட்புமனு தாக்கல் செய்யும்போது சங்கத்தில் தேர்தல் கட்டணம் (தலைவர் - Rs.1,00,000/-

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மற்ற நிர்வாகிகள் - Rs.50,000/-) கட்டிய ரசீதின் நகலை இணைத்து வேட்புமனு தாக்கல் செய்ய வேண்டும். தேர்தல் கட்டணம் கட்டிய ரசீது இல்லாமல் மனுக்கள் ஏற்றுக்கொள்ளப்பட மாட்டாது. (கடந்த 5 வருடத்திற்குள் வெளியிட்ட திரைப்படத்தின் தணிக்கை சான்றிதல் நகல், மற்றும் அதனை வெளியிட்ட நாளன்று வெளியான பேப்பர் விளம்பரம் ஆகியவற்றினை கண்டிப்பாக இணைக்க வேண்டும்)"

19. Therefore, according to the 2nd respondent/defendant, at the time of submitting the application, the candidates have to produce the censor certificate, that too the same should have been obtained within five years before the date of notification.

20. Therefore, any regular member who has produced and released the Tamil straight picture in the last five years, is alone eligible to seek and file nomination and contest in the election for the office bearers.

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21. In respect to the same, the learned senior counsel appearing for the applicants/plaintiffs made a submission that the respondents 3 to 5/defendants are

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not having the requisite qualification, since they have not produced and released the regular film within five years prior to the date of notification.

22. Now, on considering the said submission with the relevant records, in the guidelines issued by the 2nd respondent/defendant, it would appear that at the time of filing the nominations, the candidate who is entitled to participate in the election of office bearers, has to produce the copy of censor certificate and copy of the paper publication which was effected on the date of release of the said film alleged to be produced by the candidate and is entitled to file a nomination.

23. But, here it is a case admitted by the respondents 3 to 5/defendants themselves that the newspaper advertisement in respect to the respondents 3 and 4/defendants had been effected on 16.10.2020 and 17.10.2020, respectively. More than that in respect to the 5th respondent, the newspaper advertisement was effected on 20.10.2020, thereby, on the date of nomination, the respondents 3 to 5 are not having the requisite qualification for participating in the election.

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24. Though in the letter dated 26.10.2020 issued by the 2nd respondent it was mentioned that the respondents 3 to 5/defendant have produced the film in their company name, in respect to the date of censor certificate and in respect to the paper publication, nothing has been mentioned. So, it cannot be said that only after following Rule 13 of the bye-law, the said letter has been issued by the 2nd respondent/defendant among the members of the 1st respondent/defendant council.

25. Further, Rule 13 of bye-law is very clear that though the respondents 3 to 5/defendants are regular members, since they have not produced and released the tamil straight picture in the last five years, they are not eligible for contesting in the election for office bearers. As per the bye-law, they are only eligible to participate in the election for executive committee members. Accordingly, the documents produced by the applicants/plaintiffs, would establish a prima facie case that respondents 3 to 5/defendants have contested in the election without any pre requisite qualification.

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26. Though it was contended on the side of the respondents 3 to 5/defendant, that the previous election in respect to the 1st respondent Council, has been completed by following the present procedure pertaining to the application, in order to show the same, nothing has been produced before this Court.

27. Accordingly, this Court is of the considered opinion that in view of Rule 13 of the Bye-law, respondents 3 to 5/defendants are ineligible persons for filing nominations, for contesting election which is to be proposed for office bearers. Though, the whole object of the bye-law is for protecting the right of the members of the 1st respondent council, the same can be viewed only in accordance with rule framed in each and every area.

28. The further contention raised by the learned senior counsel appearing for the respondents 3 to 5/defendants is that at the time of scrutinising the nomination, the applicants/plaintiffs have not raised any objection. Only one Singaravadivelan has raised the objection and thereafter, he filed the suit and the

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same was dismissed as withdrawn and therefore, the applicants/plaintiffs, are not at all having any right to challenge the said election, after declaring the result.

29. Now, on considering the said submission with the relevant records, it would be necessary to see whether the applicants/plaintiffs, are entitled to file the present suit.

30. Admittedly, the applicants/plaintiffs are the members in the 1st respondent's Society. Further, the 1st defendant's society was registered under the Tamil Nadu Societies Registration Act, 1975 and by virtue of Section 53, if the members of the Society feel that there is a violation of Bye-laws, they are entitled to challenge the same before the Court of law. Ultra violate action can always be challenged by such members and there is no bar for such challenge. Though, Section 36 of the Tamil Nadu Societies Registration Act, deals with the power of the Registrar to enter into the affairs of a registered Society, the election dispute will not come under the purview of such enquiry by the Registrar. Since the bye-law pertains to the 1st respondent/defendant Council do not provide for any

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mechanism to challenge the election, the common law remedy, available to a member is that he has to file a suit, before the appropriate authority for challenging the election.

31. In an identical situation, when at the time of disposing Application No.317 of 2015 in C.S.No.682 of 2014, vide order dated 22.07.2015 ***[Mr.Tim Boyd, International President Vs. Mr.Kesiraju Krishna Phani & 12 others],*** this Court has held as follows:

> "29. In this case, the Bye-laws of the first defendant-Society do not deal with the procedures for challenging the elections. In other words, there is no specific bar in the Bye-laws for filing a suit for challenging the elections. Equally, the Bye-laws do not contemplate that such challenge should be made only by the contesting candidates by filing an Election Petition. The relevant statutory provision, namely Section 36 of the Tamil Nadu Societies Registration Act, also is not empowering the Registrar of Co-operative Societies to go into the election dispute. In fact, the very same issue was considered by me in a recent decision decided on 15.07.2015 in O.A.No.411 of 2015 and Application Nos.4053 and 2853 of 2015 in C.S.No.309 of 2015, wherein it has been observed in paragraphs 20 to 23 as follows:
>
> > "20. Thus, it is evident that the elections have to be conducted only as per the above mandatory procedures and not otherwise. A further perusal of the

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above said Bye-laws shows that there is no provision prohibiting the members or voters from challenging the elections by filing a suit. In other words, it is not contemplated in the Bye-laws that such elections can be challenged only by way of Election Petition and not otherwise. If the process of elections is by certain procedures which are outside the scope of the Bye-laws and against the specific mandatory procedures contemplated therein for conducting the elections, certainly, the same can be challenged before the Court of Law. It can be at the instance of a voter, even if he is not a contesting candidate. It is needless to say that the voter is a member and not a stranger of an Association and thus, he has every right to protect the interest of the Association and see that the election is conducted as per the Bye-laws of such Association. If the contesting candidate(s) has/have chosen to keep silent, for various reasons or for any extraneous consideration, it does not mean that such procedures followed in the process of elections, cannot be challenged by any other person, namely the voters/members of the Association. Equally, the Court cannot be a mute spectator to such illegal process of elections and give its seal of approval, merely because the challenge was not made by a contesting candidate. While expressing this view, I am fully conscious of the well-settled principle that the challenge to the elections

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is not a common law remedy and it has to be specifically provided under the statute. Further, the right to contest the election or to question the election by means of the Election Petition is neither common law nor fundamental right and instead, it is a statutory right regulated by the statutory provisions.

21. At the same time, this Court is also reminded of the fact that the election is a symbol of Democracy and the same has to be conducted strictly in accordance with the procedures established by law in a fair, transparent and unbiased manner. There cannot be any compromise on the mandatory and essential procedures in conducting the elections. Only when those procedures are strictly followed, it could be said that the Democratic way of electing people, has been achieved. If there are any deviations, it should be viewed seriously, as the same cannot get the seal of approval from a Court of Law, automatically.

22...

23....”

32. Therefore, for the submission made by the learned senior counsel appearing for respondents 3 to 5/defendants, this Court has already decided that every member of the Society is having the right to challenge the election. Further,

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it was clearly observed that the election could be conducted only by following the rules and regulations formulated in the bye-laws.

33. Here it is a case as already observed when at the time of notification, the respondents 3 to 5/defendants, are not having any requisite qualification. Though there are some difficulty due to covid-19 pandemic in releasing the film, in respect to the same, the General Body ought to have amended the bye-law, by considering the said situation before notifying the election. But no such amendment has been effected in the bye-law and therefore, the election has to be necessarily conducted only as per the rule provided in the bye-law.

34. Though the respondents 3 to 5 are the capable persons for holding the post of office bearers, the meaning of eligibility is entirely different from the meaning of capability. So, in all, I am of the considered opinion that after violating the eligibility criteria prescribed in Rule 13 of bye-law, the respondents 3 to 5/defendants have participated in the election and consequently, they have been declared as office bearers. Therefore, the prima facie case and balance of convenience are in favour of the applicants/plaintiffs. Further, if the respondents 3

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to 5/defendants are permitted to continue to function as office bearers, the same would cause much hardship to the applicants/plaintiffs as well as to the Council.

35. Accordingly, O.A.No.724 of 2020 is allowed and an order of injunction is granted restraining the respondents 3 to 5 / defendants 3 to 5 / from acting as office bearers in the post of Honorary Secretary, Treasurer and Vice President, till the disposal of the suit.

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R.PONGIAPPAN, J.

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