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O.A.No.23 of 2022 in C.S.No.12 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.02.2022

PRONOUNCED ON : 02.03.2022

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

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ORDER

The applicant filed the suit seeking for declaration of the circular dated 03.01.2020 issued by the defendants 1 and 2 as null and void and ultra vires the Memorandum of Association, Rules and Regulations of the 1st defendant Association and further to declare the consequential letter dated 11.01.2022 sent by the Election Officer/2nd respondent/2nd defendant as null and void, non-est, ex facie without jurisdiction and contrary to the Memorandum of Association, Rules and Regulations of the 1st respondent/1st defendant Association and also for permanent injunction restraining the defendants in any manner conducting the 77th Annual General Meeting of the 1st defendant Association either on 06.02.2022 or on any other date based on the circular dated 03.01.2022 or in any manner



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whatsoever without following the Memorandum of Association, Rules and Regulations of the 1st respondent/1st defendant Association and the Tamil Nadu Societies Registration Act 1975 and the Rules framed there under.

2. In the said suit, the applicant also filed an original application in O.A.No.23 of 2021 for temporary injunction restraining the respondents/defendants in any manner conducting 77th Annual General Meeting of the 1st respondent Association either on 06.02.2022 or on any other date based on the circular dated 03.01.2022 or in any manner whatsoever without following the Memorandum of Association, Rules and Regulations of the 1st respondent/1st defendant association and the Tamil Nadu Societies Registration Act 1975 and the Rules framed thereunder, pending disposal of the present suit.

3. This Court on earlier occasion dated 24.01.2022, after hearing the learned counsel for the applicant and perusing the records, granted ad interim injunction as prayed for in the original application and directed the applicant to comply with the Order under Order 39 Rule 3 of CPC.



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4. The respondents after service of summons, entered appearance and the 2nd respondent filed an application in A.No.420 of 2022 to vacate the ad-interim injunction order dated 24.01.2022 passed in O.A.No.23 of 2022 in C.S.No.12 of 2022. Since the earlier order passed by this Court is an ex-parte order, there was no need to vacate the order and the application has to be heard to pass orders on merit. Therefore, the learned counsel for the 2nd respondent Mr.P.L.Narayanan has withdrawn the application in A.No.420 of 2022 and would submit that the affidavit filed in the said application may be treated as a counter affidavit in O.A.No.23 of 2022. Therefore, based on the endorsement made by the learned counsel for the 2nd respondent, the application in A.No.420 of 2022 is dismissed as withdrawn on 07.02.2022 and the Original application in O.A.No.23 of 2022 was heard.

5. Mr.T.V.Ramanujam, learned Senior Counsel representing Mr.B.Arvind Srevatsa, learned Counsel for the applicant/plaintiff would submit that the election for the 1st respondent Association was notified by the 2nd respondent on 03.01.2022 and as per the said notification, the nominations will have to be filed on or before 10.01.2022. But the election pertains to four States viz., Tamilnadu, Karnataka, Kerala and Andhra



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Pradesh and despite the lockdown due to the prevailing pandemic situation, only short notice was given by the second respondent for submission of nominations by the members of the 1st respondent Association for participating in the election. The applicant was desirous in participating in the election however, since he received the notice about the election notification dated 03.01.2022 only on 05.01.2022 and due to the pandemic and lockdown restrictions, he could not submit his nomination before 10.01.2022. Since the applicant is the resident of Chennai, he received the notification on 05.01.2022. But the members of other States might have received the same only thereafter. Therefore, without affording a fair opportunity to all the members of the 1st respondent Association to participate in the election, the 2nd respondent has issued the notification hurriedly and arbitrarily. Further, the 2nd respondent has also declared the results on 11.01.2022. As per the declaration of results, the election for Officer Bearers seems to be unopposed. He would submit that there were several members who were desirous of participating in the election but, due to the short notice given by the 2nd respondent under the notification dated 03.01.2022, the members who were interested in participating in the



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election could not participate and they were not afforded sufficient opportunity to file their respective nominations on or before the deadline fixed under the notification. Therefore, it is nothing but denial of opportunity to all the members arbitrarily from participating in the election and therefore, he has filed the suit for the above relief and during the pendency of the suit, he seeks for interim injunction.

6. Mr.P.L.Narayanan, the learned Counsel representing Mr.R.Sagadean, learned Counsel for the 2nd respondent would submit that the 1st respondent Association is a Society registered and governed under the Tamil Nadu Societies Registration Act 1975 and the 1st respondent Association shall be classified into the following distinct groups viz., (a) Studios (b) Producers (c) Distributors (d) Exhibitors (e) Affiliated association (f) Associates and the 1st respondent Association shall be managed by the Office Bearers and the Executive Committee and that the Office Bearers of Chamber shall be a President, 4 Vice Presidents, Honorary Secretaries and a Treasurer. The Executive Committee of the Chamber shall consist of 36 elected members, 14 nominated members and upto a



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maximum of 4 co-opted members of the Office Bearers who shall be ex-officio members thereof. The 1st respondent Association President of the Chamber shall be elected by the members of all the groups of Chamber from among themselves. However the persons elected every year as President shall be chosen by rotation from each of the 4 languages in the following States namely Andhra Pradesh Telangana, Karnataka, Kerala and Tamilnadu and Pondicherry and any person who has held the office of President for a year, shall not be eligible to seek nomination for Presidentship for the next two succeeding years. The office bearers and the 36 members of the Executive Committee shall be elected annually by the members of the Chamber on or before the date of every Annual General Body Meeting as may be fixed by the Executive Committee.

6 (a) The learned counsel for the 2nd respondent would further submit that the 2nd respondent is a senior member of the 1st respondent Association. Apart from that, he is the Former President and also the Chairman of the Building Committee of the 1st respondent Association. Pursuant to the Executive Committee meeting of the 1st respondent Association held on 22.12.2021, the 2nd respondent was unanimously appointed as an Election



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Officer to conduct the election for the 1st respondent Association for the year 2022-2023 on 06.02.2022 at the premises of the 1st respondent Association. Hence, the 1st respondent sent the meeting notice dated 03.01.2022 to all the members including to the applicant informing that the 77th Annual General Meeting of the Chamber will be held in the premises of the South Indian film Chamber of Commerce/1st respondent Association on 06.02.2022 at 6.30 p.m. or soon after completion of counting of votes in the election and the agenda for the AGM.

6 (b). The learned counsel for the 2nd respondent would also submit that the circular to all the members along with the nomination forms was also attached with the meeting notice dated 03.01.2022 wherein the date, venue and the procedure regarding the conduct of the election were also mentioned by the 2nd respondent as per Rules 34 to 37 of the Memorandum of Association and Rules of the Chamber as if, the annual election of Office Bearers and Committee Members for the year 2022-2023 will be held on February 6th 2022. In the said circular to all the members, the election for the total 44 posts were mentioned and it is also mentioned that the



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nominations in the prescribed form for several Office Bearers and Committee members duly filled shall be deposited in the sealed election box provided for the purpose at the office Chamber during office hours or sent by registered post in a cover superscribed “Elections” so as to reach the Office of the Chamber on or before Monday, 10th January 2022 by 5.30 p.m. Hence, in the circular, the election schedule has been mentioned clearly. As such, the moment they receive the notice, the members who want to contest in the election, at the earliest they can file their nominations and therefore, sufficient time was given to all the members to file and send their nominations.

6(c). Further, the learned counsel for the 2nd respondent would submit that in the circular dated 03.01.2022, the authorization form signed by the 2nd respondent has also been sent to all the members to nominate and authorise to vote in the election for the year 2022-2023 to be held on 6th February 2022 and to represent in the AGM as per the Rule 8 of the Rules of the Chamber. As per the election schedule, after scrutiny and declaration of valid nominations, the 2nd respondent sent a letter dated 11.01.2022 in



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accordance with the Memorandum of Association, Rules and Regulation of the 1st respondent Association, to all the members including the applicant wherein, it has been stated about the valid nominations and for the post of Vice President (Distributor Group), no nomination has been filed and as such, declared and published the results of the valid nominations to all the members. The applicant after receipt of the letter dated 11.01.2022, has sent a representation dated 18.01.2022 to the 1st respondent Association which was received by them on 21.01.2022.

6 (d). The learned counsel for the 2nd respondent would also submit that the date of the AGM was decided in the Executive Committee meeting of the 1st respondent Association held on 22.12.2021 and at that point of time, there was no surge in Covid-19 cases. In view of the statutory compliance of the 21 days notice for the AGM, the date was fixed as 06.02.2022 for the AGM. The election circular dated 03.01.2022 has been sent to the applicant by speed post on 03.01.2022 and the same was received by him on 04.01.2022 and not on 05.01.2022. The applicant who is residing in Chennai has not even filed the nomination and not contested in the



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election. Therefore, he has no locus standi to question the election and he has no legal rights whatsoever to question the election result.

6(e). The learned counsel for the 2nd respondent would further submit that even in the recent Government local body election notification, only 7 days time has been given for filing nominations. Even in the last election, the Hon'ble Justice Mr. D.Hariparanthaman (Retrd.) who conducted the election as an Election Officer, gave only 7 days time for filing the nominations. The same schedule has been followed by the 2nd respondent herein as an Election Officer and the applicant who has not even taken any steps or shown any interest, simply made allegations which are malafide and motivated one. The Election Officer/ the 2nd respondent has given full and equal opportunity to all the members to participate and contest in the election and also conducted the election strictly in compliance and duly followed the Memorandum of Association, Rules and Regulations of the 1st respondent Association. He would further submit that the 7 days period for filing the nominations is enough and sufficient.



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6 (f). The learned counsel for the 2nd respondent would submit that the

Office Bearers and the Executive Committee members were unanimously elected, as such, there was no contest and no polls and no counting of votes and the results have also been published. Further the election results will be placed in the AGM and the same will be approved by the members of the association on the date of the AGM. Whereas the applicant in order to stall the functioning of the Association, has filed the present suit and application malafidely. Therefore, the contention of the learned counsel for the applicant is not acceptable. Therefore, the application is liable to be dismissed and the ex-parte order passed by this Court dated 24.01.2022 may be vacated.

7. Mr.K.Hari Shankar, learned counsel for the 1st respondent also supports the case of the 2nd respondent.

8. Heard the learned Counsel on either side.

9. Admittedly the applicant is one of the members of the 1st respondent Association and admittedly the 2nd respondent was appointed as



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an Election Officer for the 1st respondent Association to conduct the election for the year 2022 - 2023 and the election circular dated 03.01.2022 was sent to all the members and 7 days time was given to the members for submitting their nominations.

10. According to the applicant, he received the said notice only on 05.01.2022 and the deadline for submitting the nominations was 10.01.2022. Further, there were several other members in all over the southern States Viz., Andhra Pradesh, Karnataka, Kerala and Tamil Nadu who may be interested in participating in the election and there were difficulties for the members to submit their nominations or to respond to the notification within a short span of time due to pandemic situation. Therefore, the time period of 7 days for submitting the nominations was not sufficient due to lockdown restrictions at the relevant point of time.

11. The learned Counsel for the 2nd respondent would submit that the notice was received by the applicant on 04.01.2022 itself and sufficient opportunity and time was given to all the members of the society to



participate in the election. According to him, even in the earlier election, the

Hon'ble Justice Mr. D.Hariparanthaman (Retrd.) while conducting the election, gave only 7 days notice and the same procedure has been followed in this election also by the 2nd respondent. Only the elected members filed the nominations and therefore, they have been declared as elected members as unopposed and there is no violation of Memorandum of Association, Rules and Regulations of the 1st respondent Association.

12. Admittedly, the 1st respondent Association nominated the 2nd respondent as an Election Officer which is not in dispute. The circular dated 03.01.2022 is also not in dispute. The letter dated 11.01.2022 is also not disputed. The main contention of the applicant is that during the pandemic and lockdown situation, the procedure adopted by the 2nd respondent is arbitrary and no sufficient opportunity was given to the members who may be interested to participate in the election for the 1st respondent Association and most of the members have not been duly intimated due to which, they could not file any nominations.



13. Admittedly, pandemic situation prevailed during the relevant point of time and lockdown was declared in many of the States by their respective Governments to some extent. The Central Government also issued some guidelines for the lockdown in order to bring down the Covid spread. But, no consistent guidelines were followed by both the States and Central Government and the lockdown restrictions varied from State to State. The entire world was paralysed to some extent from the day to day activities. Even in some places, the internet and telephone connections were not functioning and the people were facing difficulties to travel freely from one State to another. Further, the members of the 1st respondent Association are residing all over the Southern States namely Andhra Pradesh, Karnataka, Tamil Nadu and Kerala and some of them are senior citizens. The learned counsel for the 2nd respondent pointed out that in the earlier election conducted by the Hon'ble Justice Mr. D.Hariparanthaman (Retrd.) only 7 days time was granted for filing nominations. In the normal situation, the 7 days time for filing nominations may be a sufficient time. But that situation cannot be applied to the present election. During pandemic and lockdown situation, the 7 days time for filing nominations would not be sufficient.



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Therefore, the contention of the applicant is according to this Court is genuine, reasonable and also acceptable and the reasons stated by the respondents in the counter affidavit are not acceptable for the relevant period.

14. Therefore, this Court finds that the applicant has made out prima facie case and balance of convenience is also in his favour and this Court is of the opinion that if the interim injunction is not granted, the applicant and the other members of the Association would suffer irreparable loss and injuries and the same cannot be compensated with any terms of compensation or costs. Therefore, this Court feels that the applicant is entitled for interim injunction. Hence, this Court confirms the order passed by this Court dated 24.01.2022.

15. Accordingly, this Original Application is allowed and the order of this Court dated 24.01.2022 is made absolute.

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Pre-Delivery Order in
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