



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 31ST DAY OF JANUARY 2022

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

O.P.No. 563 of 2019

and

O.A.No. 1210 of 2018

**O.P.No. 563 of 2019 :-**

(In the matter of the Arbitration and  
Conciliation Act 1996

and

In the matter of the Dispute

Between

Madras Sporting Youngsters Football  
Club and Chennai Football  
Association and others Under Article  
46 of the Constitution of the Chennai  
Football Association)

Madras Sporting Youngsters Football Club

Rep.by its Honorary Secretary

T.P. Thangaraj,

S/o. T.R.Pandiarajan,

No.42, 1<sup>st</sup> Floor, Loco Scheme 2<sup>nd</sup> Street,

Jawahar Nagar,

Chennai – 600 082.

... Petitioner

-Vs-

1. Tamil Nadu Football Association

Rep.by its President

Room No.73, Jawaharlal Nehru Stadium,

Chennai – 600 003.

2. Chennai Football Association,

Room No.73, Jawaharlal Nehru Stadium,

Chennai – 600 003.



3. Mr. Rohit Ramesh,  
No.15, Parthasarathy Gardens,  
Alwarpet, Chennai – 600 018.
4. Mr. E.Sugumaran,  
No.1, Narayanasamy Garden,  
1<sup>st</sup> Street, R.A.Puram,  
Chennai – 600 028.
5. Mr. Ramu,  
No.23/45, VOC Nagar,  
3<sup>rd</sup> Street, Puliyanthope,  
Chennai – 600 012.
6. Mr. S.Anandaraj,  
No.161, MTH Road,  
Villivakkam,  
Chennai – 600 049.
7. Mr. K.Madurai,  
No.34, Parthasarathy Street,  
Purasawalkam,  
Chennai – 600 007.
8. Mr. Srish Balakrishnan,  
No.2/11, I Floor,  
Nowroji East West Road,  
Chetpet,  
Chennai – 600 031.
9. Mr. E. Vallavan Singiah,  
L180, Karpagam Colony,  
First Avenue,  
Anna Nagar East,  
Chennai – 600 102.
10. Mr. V.M.P. Hari Prasad,  
No.30/5, Subramani Street,  
Krishnamurthy Nagar,  
Chennai – 600 118.



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11. Mr.D.R.Padmanabhan,  
C/o.Mr.G.Vijayakumar,  
Joint Secretary (Sports),  
Income Tax R.C.,  
Computer Operation,  
No.1808, Uthaman Gandhi Salai,  
Nungambakkam,  
Chennai – 600 034.
12. Mr.T.Ramesh Babu,  
No.9/23, North Madha Church Street,  
Royapuram,  
Chennai – 600 13.
13. Mr. M.L. Alex Dominic,  
No.4, Taluk Office Road,  
Little Mount, Saidapet,  
Chennai – 600 015.
14. Mr.C.Balaji,  
C/o. Mr.P.Narasimhan,  
Lucas TVS Ltd.,  
Chennai – 600 050.
15. Mr. V. Durai,  
No.28, Pycrafts Road,  
Cenetoph Road,  
Teynampet,  
Chennai – 600 018.
16. Mr.S.Grand Durai Pandian,  
C/o.Mr.D.S.Thiyagarajan,  
Sports Officer, Chennai Customs R.C.,  
Custom House,  
31 Rajaji Salai,  
Chennai – 600 001.
17. Mr. S.K.Gokul Ram,  
No.21/50, Arunachalam Street,  
Vepery,  
Chennai – 600 007.



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18. Mr. Joseph Antony Noel,  
C/o. Mr.R.Srinivasan,  
Secretary, Indian Bank S & R.C.,  
No.254-260, Avvai Shanmugam Salai,  
Royapettah,  
Chennai – 600 014.
19. Mr. P. Munuswamy,  
C/o. Mr.E.Narasimhan,  
Bharath Petroleum Corporation Ltd.,  
Installation Club,  
PB No.1152,  
Tondiarpet,  
Chennai – 600 081.
20. Mr. S. Rajan,  
Assistant/Council,  
Chennai Corporation Officials Associations,  
No.10, Adhishesha Nagar, 3<sup>rd</sup> Street,  
Perambur,  
Chennai – 600 012.
21. Mr.B.Raghupathy,  
No.9. Asirvathapuram II Stret,  
Puliyanthope,  
Chennai – 600 012.
22. Mr.S.K.Thanigaivelan,  
C/o. R.K.Diwakar,  
No.6. Cresent Colony,  
K.P.Desan Road,  
Alwarpet,  
Chennai – 600 018.
23. Mr. V. Thiyagarajan,  
Election Committee Member,  
AP 868, 'H' Block, 1<sup>st</sup> Street,  
12<sup>th</sup> Main Road,  
Anna Nagar,  
Chennai – 600 040.



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24. Mr.E.Venkatesan,  
Election Committee Member,  
C/o. Chennai Football Association,  
Room No.73, Jawaharlal Nehru Stadium,  
Chennai – 600 003.

... Respondents

Original Petition praying that this Hon'ble Court be pleased to appoint arbitrators to settle the disputes with regard to the manner of conduct of the elections and the elections held on 30.06.2018 to the 2<sup>nd</sup> respondent Association and all other related matters.

**O.A.No. 1210 of 2018 :-**

In the matter of the Arbitration and  
Conciliation Act 1996

and

In the matter of the Dispute

Between

Madras Sporting Youngsters Football  
Club and Tamil Nadu Football  
Association Under Article 66 of the  
Constitution of the Tamil Nadu  
Football Association.

Madras Sporting Youngsters Football Club  
Rep.by its Honorary Secretary  
T.P. Thangaraj,  
S/o. T.R.Pandiarajan,  
No.42, 1<sup>st</sup> Floor, Loco Scheme 2<sup>nd</sup> Street,  
Jawahar Nagar,  
Chennai – 600 082.

... Applicant



1. Tamil Nadu Football Association  
Rep.by its President  
Room No.73, Jawaharlal Nehru Stadium,  
Chennai – 600 003.
2. Chennai Football Association,  
Room No.73, Jawaharlal Nehru Stadium,  
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Lucas TVS Ltd.,  
Chennai – 600 050.
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No.28, Pycrafts Road,  
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C/o.Mr.D.S.Thiyagarajan,  
Sports Officer, Chennai Customs R.C.,  
Custom House,  
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C/o. Mr.R.Srinivasan,  
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AP 868, 'H' Block, 1<sup>st</sup> Street,  
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24. Mr.E.Venkatesan,  
Election Committee Member,  
C/o. Chennai Football Association,  
Room No.73, Jawaharlal Nehru Stadium,  
Chennai – 600 003.

25. Hon'ble Justice Mrs.K.B.K.Vasuki,  
Retired Judge of Hon'ble Madras High Court,  
Election Observer,  
92A, 2<sup>nd</sup> Main Road,  
3<sup>rd</sup> Avenue, Panayur, E.C.R.,  
Chennai – 600 119.

... Respondents

Original Application praying that this Hon'ble Court be pleased to grant an interim order of injunction restraining the respondents 3 to 22 from functioning as office bearers and Executive Committee Members of the 2<sup>nd</sup> respondent Chennai Football Association.

This Original Petition along with the application having been heard on 25.01.2022 in the presence of Mr.Arun C. Mohan, Advocate for the petitioner in O.P.No.563 of 2019 and for the applicant in O.A.No. 1210 of 2018 and Mr.J.Sivanandaraaj for Mr.Mahesh Kumar, Advocates for the 2<sup>nd</sup> respondent in O.P.No.563 of 2019 and O.A.No. 1210 of 2018 and upon reading the petition filed in O.P.No.563 of 2019 and the order dated 01/11/2019 made in O.A.No. 1210 of 2018 and A.Nos. 10164 of 2018, 2689 and 2690 of 2019 and O.P.No. 563 of 2019 and having stood over for



the presence of said advocate for the parties hereto and this Court having observed that the dispute raised by the petitioner is a non arbitrable dispute and hence an Arbitrator cannot be appointed as sought for by the petitioner in the petition, **it is ordered as follows:-**

That the O.P.No. 563 of 2019, be and is hereby dismissed.

2. That the O.A.No. 1210 of 2018 be and is hereby dismissed.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, ACTING CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID THIS THE 31ST DAY OF JANUARY 2022.

Sd/-

ASSISTANT REGISTRAR (O.S-II)

//Certified to be true copy//

Dated at Madras this the                      day of                      2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



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31.01.2022

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O.P.No. 563 of 2019  
and  
O.A.No. 1210 of 2018

ORDER

DATED : 31.01.2022

THE HON'BLE MR. JUSTICE  
ABDUL QUDDHOSE

FOR APPROVAL: 31/01/2022

APPROVED ON : 31/01/2022



**WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS**

RESERVED ON :25.01.2022

PRONOUNCED ON : 31.01.2022

CORAM:

**THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**

**O.P.No.563 of 2019**

**and**

**O.A.No.1210 of 2018**

Madras Sporting Youngsters Football Club  
Rep. By its Honorary Secretary  
T.P.Thangaraj

..... Petitioner

Vs

1. Tamil Nadu Football Association  
Rep. By its Presidents  
Room No.73, Jawaharlal Nehru Stadium,  
Chennai – 600 003.

2. Chennai Football Association  
Room No.73, Jawaharlal Nehru Stadium,  
Chennai – 600 003.

3. Rohit Ramesh

4. E. Sugumaran

5. Ramu

6. S. Anandaraj

7. K.Madurai

8. Srish Balakrishnan

<https://hcservices.ecourts.gov.in/hcservices/>

9. E. VallavanSingiah



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11. D.R. Padmanabhan

12. T. Ramesh Babu

13. M.L. Alex Dominic

14. C. Balaji

15. V. Durai

16. S. Grand Durai Pandian

17. S.K. Gokul Ram

18. Joseph Antony Noel

19. P. Munuswamy

20. S. Rajan

21. B. Raghupathy

22. S.K. Thanigaivelan

23. V. Thiyagarajan

24. E. Venkatesan

...Respondents

**Prayer:** Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 to appoint arbitrators to settle the disputes with regard to the manner of conduct of the elections and the elections held on 30.06.2018 to the 2<sup>nd</sup> respondent Association and all other related matters.

For Petitioner : Mr. Arun C. Mohan

For Respondents : Mr. J. Sivanandaraaj for  
Mr. Maheshkumar for R2

**ORDER**

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The question that arises for consideration in this petition filed under Section 11 of the Arbitration and Conciliation Act, seeking for appointment of an Arbitrator is whether a dispute pertaining to election of office bearers of a Society in terms of its bye-laws is arbitrable.

2. The dispute relates to the election for the post of office bearers namely one President, four Vice Presidents, one Secretary, four Assistant Secretaries, one Treasurer and ten Executive Committee Members in the 2nd respondent Association for the period 2018-2022 which was held on 30.06.2018. The 1<sup>st</sup> respondent is the State Association and the 2<sup>nd</sup> respondent is a District Association, which is controlled and monitored by the 1<sup>st</sup> respondent. The 4th respondent in the said election was elected as Secretary for the 2nd respondent Association. The petitioner challenges the election of the 4th respondent as Secretary of the 2nd respondent Association. According to the petitioner, there is an arbitration agreement in the bye-laws of the 2nd respondent Association and as per the said arbitration agreement, parties are entitled to refer any dispute even in the nature of one raised by the petitioner to arbitration. Since there was no consent given by the respondents for arbitration, the petitioner has filed this petition seeking for appointment of an Arbitrator.



3. However, it is the contention of the respondents that the nature of the dispute raised by the petitioner which is an election dispute cannot be referred to arbitration as it is not an arbitrable dispute. According to them, the dispute raised by the petitioner is of public domain and third party interest are involved and therefore such a dispute cannot be adjudicated by an Arbitral Tribunal. Further it is their contention that the arbitration agreement referred to in the respective bye-laws of the 1st and 2nd respondent Associations is not meant for deciding election disputes pertaining to election of office bearers.

4. Heard Mr.Arun C. Mohan, learned counsel for the petitioner; and Mr.J.Sivanandaraaj, learned counsel for the 2<sup>nd</sup> respondent.

5. Mr.Arun Mohan, learned counsel for the petitioner drew the attention of this Court to Article 66 of the 1st respondent's bye-laws and would submit that it facilitates referring any dispute to arbitration so long as it does not fall under the purview of the other two committees, i.e. the Disciplinary Committee or the Appeals Committee. According to him, the present dispute is a dispute between the members of the 1<sup>st</sup> respondent Association and hence directly falling under the purview of Article 66 and therefore, it is an arbitrable dispute.



6. Mr.Arun Mohan, also submits that Section 16 of the Arbitration and Conciliation Act, 1996 empowers the Arbitral Tribunal to rule on its own jurisdiction as and when the jurisdiction of the Arbitral Tribunal is questioned. Therefore, according to him, when there is an arbitration agreement found in the bye-laws of the 1st respondent, this Court will have to necessarily appoint an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 and if at all any question regarding jurisdiction of the Arbitral Tribunal is raised, it can be done only under Section 16 of the Arbitration and Conciliation Act before the Arbitral Tribunal which is empowered to rule on its own jurisdiction.

7. He would further submit by way of illustration that the Tamil Nadu Co-operative Societies Act does not by any means explicitly bars arbitration proceedings and the same stands open to adaptation to any Society so far as it is confined to law. According to him, there being no exclusion of resorting to arbitration under the law governing the 1st respondent Society, the present dispute cannot be precluded from arbitral jurisdiction.

8. In support of his submission, Mr.Arun Mohan, learned counsel  
relied upon a decision of the Hon'ble Supreme Court in the case of



***Mayavati Trading Pvt. Ltd., V. Pradyuat Deb Burman reported in 2019 8***

**SCC 714** and would submit that the scope of a judicial authority under Section 11 is only to see whether there exists an arbitration agreement between the parties. According to him, as per the said decision all other preliminary issues have to be decided only by the Arbitral Tribunal and cannot be decided under Section 11 of the Arbitration and Conciliation Act.

9. Mr.Arun Mohan, learned counsel also relied upon the decision of a learned Single Judge of this Court in the case of ***Tirunelveli District Football Association, v The President, Tamil Nadu Football Association and another reported in 2016 (1) CTC 26*** and would submit that in that decision also it was held that a writ petition cannot be entertained against the very same 1st respondent Association herein as there is an effective and efficacious alternative remedy of arbitration.

10. Mr.Arun Mohan, learned counsel also drew the attention of this Court to another judgment of the Hon'ble Supreme Court in the case of ***Afcons Infrastructure Ltd. V. Cherian Varkey reported in 2010 (8) SCC 24*** and in particular, he referred to paragraph No.27 of the said judgment which has listed out the categories of cases that are normally considered to

be not arbitrable having regard to their nature. He would submit that the



present dispute will fall under the exception to category No.(ii) mentioned in paragraph No.27 as it involves a dispute between two groups trying to get control over the Management of a Society. According to him, though the present dispute is an election dispute, no third party interest are involved as no other party has questioned the validity of the election of the 4<sup>th</sup> respondent as Secretary excepting for the petitioner and the petitioner has also arrayed all the parties as party respondents who may be aggrieved by any interference by the Arbitral Tribunal.

11. Mr.Arun Mohan, learned counsel finally drew the attention of this Court to the latest decision of the Hon'ble Supreme Court as regards arbitrability of disputes viz., ***Vidya Drolia V. Durga Trading Corporation reported in 2021 (2) SCC 1***. According to him, the present dispute raised by the petitioner is not an action in rem as the petitioner's grievance is only against the 4<sup>th</sup> respondent, who has been elected as Secretary and according to him any relief granted by the Arbitral Tribunal will not affect the rights and liabilities of the persons who are not bound by the arbitration agreement. Therefore, according to him ***Vidya Drolia's*** case referred to supra supports the case of the petitioner for referring the dispute to arbitration.



12. Per contra, Mr.Sivanandaraaj, learned counsel for 2nd respondent would submit as follows :-

a) The dispute challenging the election process is not an arbitrable dispute.

b) The dispute in relation to election falls within the domain of public forum.

c) Dispute challenging the election in an association can only be challenged in a Civil Suit.

d) The election dispute is not covered under the ambit of arbitration clause provided under the bye-laws of the 1<sup>st</sup> respondent Association.

e) The reason for challenging the election of Mr.E.Sugumaran, the 4<sup>th</sup> respondent does not exist any more since, the Arbitral Award dated 18.11.2017 passed against him which is the basis of the dispute raised by the petitioner has been set aside by order of this Court on 26.02.2020 in O.P. No.627 of 2018 and hence the entire dispute is a deadwood.

f) Few respondents in the application and petition are not parties to the Arbitration agreement and hence not amenable to arbitration.

g) Under Section 89(2) of the Code of Civil Procedure, 1908 the applicability of Alternative Dispute Resolution to certain categories which clearly excludes dispute in relation to elections in societies, clubs, associations etc.

h) It is only the Civil Court which has competent jurisdiction to decide a dispute regarding election of office bearers to societies.





14. In support of his submissions Mr.Sivanandaraaj, learned counsel for the respondents drew the attention of this Court to the following authorities:

a) ***Booz Allen & Hamilton Inc. V. SBI Home Finance Ltd., reported in 2011 5 SCC 532*** and would submit that as the dispute raised by the petitioner involves third party interest and is an election dispute and falls under public domain and therefore the action contemplated by the petitioner is an action in rem, which is not arbitrable..

b) ***Vidya Drolia V. Durga Trading Corporation reported in 2021 (2) SCC 1.*** He would submit that in paragraph 76.1(1) of the aforesaid decision, it has been made clear that when the cause of action and subject-matter of the dispute relates to an action in rem, that do not pertain to subordinate rights in personam that arise from rights in rem, the dispute is not arbitrable. According to him, the present dispute raised by the petitioner is under the said category and therefore, it is not an arbitrable dispute.

15. Mr.Sivanandaraj, learned counsel also would submit that the decision relied upon by the learned counsel for the petitioner in ***Afcons Infrastructure Ltd. V. Cherian Varkey reported in 2010 (8) SCC 24*** also



supports the case of the respondents as according to him, the Hon'ble Supreme Court in the said decision has made it clear while listing out some of the categories of the cases, which are not arbitrable has held in paragraph No.27 (i) that representative suits under Order 1 Rule 8 which involve public interest or interest of numerous persons who are not parties before the Court cannot be referred to arbitration. According to him, the present dispute raised by the petitioner involves public interest and the interest of numerous other persons who are not parties to the arbitration and therefore, the dispute raised by the petitioner is not an arbitrable dispute.

16. Mr.Sivanandaraj, learned counsel also drew attention of this Court to an unreported order passed by a learned Single Judge of this Court dated 28.06.2019 in Application No.1775 of 2019 in C.S. No.126 of 2019 in the case of ***Tamil Nadu Football Association vs. Pennar Senior FC*** and would submit that the learned Single Judge in an election dispute involving the very same 1<sup>st</sup> respondent Football Association after considering Article 66, 67 and 68 of the 1st respondent's bye-laws which is also relied upon by the petitioner here also held that the Arbitral Tribunal constituted by the 1<sup>st</sup> respondent Association is in the nature of an appellate authority which can hear only the disputes relating to disciplinary sanctions made against the members and does not have the jurisdiction to adjudicate the disputes



involving elections. Therefore, according to him, there is no arbitration agreement for adjudicating an election dispute.

17. Mr.Sivanandaraj, learned counsel finally drew the attention of this Court to a judgment of the Delhi High Court in the case of ***Utkarsh v. Delhi Bar Association reported in 2014 SCC Online Del 878*** involving Delhi Bar association and would submit that the Delhi High Court held that the process of election is separate from the business of the committee or executive and therefore the arbitration clause contained in the bye-laws of the Delhi Bar Association does not cover disputes between the member and the committee and therefore, the said dispute is not arbitrable. According to him, if the ratio laid down by the Delhi High Court in the aforesaid decision is applied to the case on hand also, the dispute raised by the petitioner cannot also be referred to arbitration.

18. Mr.Sivanandaraj, learned counsel would finally submit that the basis for the dispute raised by the petitioner are certain observations made against the 4<sup>th</sup> respondent in the Arbitral Award dated 18.11.2017 which has now been set aside by this Court on 26.02.2020 in O.P. No.627 of 2018.

Hence, according to him, the dispute has now become a deadwood and therefore, the question of appointment of an Arbitrator will not arise.

**Discussion :-**

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19. Arbitration agreement is defined in Section 7 of the Arbitration and Conciliation Act, 1996 and it reads as follows:-

**7. Arbitration agreement (1) In this Part, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.**

**(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.**

**(3) An arbitration agreement shall be in writing.**

**(4) An arbitration agreement is in writing if it is contained in**

**(a) a document signed by the parties;**

**(b) an exchange of letters, telex, telegrams or other means of telecommunication [including communication through electronic means] which provide a record of the agreement; or**

**(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.**

**(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.**

20. As seen from the aforesaid Section, the essentials of an arbitration

agreement are as follows :-



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- a) The existence of a dispute;
- b) The existence of a defined legal relationship between the parties to the arbitration agreement;
- c) The arbitration agreement must be in writing;
- d) The intention of the parties to refer the dispute to arbitration must be there and it should be clearly discernible from the arbitration agreement; and
- e) Arbitration agreement needs to be signed by the parties.

21. The dispute raised by the petitioner is an election dispute involving the 2<sup>nd</sup> respondent Association in which the 4<sup>th</sup> respondent was elected as Secretary which is attempted to be challenged by the petitioner through the arbitration process. The 4<sup>th</sup> respondent is not a member of the 2<sup>nd</sup> respondent Association as the Football clubs are the only members of the 2<sup>nd</sup> respondent Association and they can alone become members in it. Hence the 4<sup>th</sup> respondent in his individual capacity is not a party to the bye-laws of the 1<sup>st</sup> and 2<sup>nd</sup> respondent Association which according to the petitioner contains an arbitration agreement and the Arbitral Tribunal constituted in terms of the said arbitration agreement is empowered to decide an election dispute. As seen from the definition of an arbitration agreement, there must be an intention to go for arbitration. The intention of the parties to refer the dispute to arbitration should be clearly discernible from the arbitration agreement. The arbitration clauses based upon which



the petitioner seeks for an arbitration reference are extracted hereunder :

**Arbitration clauses contained in the bye-laws of the Tamil Nadu Football Association (1<sup>st</sup> respondent)**

**Article 66 ARBITRATION TRIBUNAL**

|            |                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 66.1       | TFA shall create an option for recourse to Arbitration, by nominating a panel of independent arbitrators who may be advocate or Magistrate to resolve any disputes between TFA, its members, Clubs, players, officials and all those involved in the Game of Association Football. The Arbitration Tribunal will only deal with the internal disputes that do not fall in the jurisdiction of the other two judicial bodies of TFA. |
| 66.2       | With regard to substance, the arbitrators shall be guided and apply the various regulations of TFA and AIFF and the Indian Law.                                                                                                                                                                                                                                                                                                     |
| 66.3       | The Arbitration procedure shall be according to the special regulations made for this purpose.                                                                                                                                                                                                                                                                                                                                      |
| Article 67 | JURISDICTION OF ARBITRATORS                                                                                                                                                                                                                                                                                                                                                                                                         |
| 67.1       | Only the Arbitrators shall deal with appeals against decisions and disciplinary sanctions of the last instance after all previous stages of appeal available at TFA, Member, Club level have been exhausted. The reference to arbitrators shall be sought by an application made to the TFA Secretariat within 10 days of notification of the decision.                                                                             |
| 67.2       | The Arbitrators shall not, however, hear appeals on :<br>a) Violation of the Laws of the Game<br>b) Suspension of up to one year.<br>c) Decisions passed by an independent and duly constituted Arbitration Tribunal of a Member.<br>d) Decisions of Disciplinary and Appeal Committee                                                                                                                                              |
| 67.3       | The Arbitrators are also empowered to deal with disputes between a third party and any entities or person mentioned in para-1 if an arbitration agreement exists.                                                                                                                                                                                                                                                                   |

**Arbitration clauses contained in the bye-laws of the 2<sup>nd</sup> respondent Association :**

|      |                                                                                                                                                                                                                                                                   |
|------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 46.1 | The TFA shall create an option for recourse to arbitration by nominating a panel of independent arbitrators to resolve any dispute that may arise between TFA, its members, Clubs, players, officials and all those involved in the game of Association Football. |
| 46.2 | The Arbitration Tribunal will only deal with internal disputes that do not fall under the jurisdiction of other two judicial bodies of TFA i.e., Disciplinary and Appeals Committee.                                                                              |





contained in both the bye-laws are concerned, they are not binding upon the respondents 3 to 24. As seen from the bye-laws, it is not discernible that the respondents 3 to 24 had the intention to refer any dispute to arbitration. There is also no documentary evidence placed before this Court by the petitioner to show that the respondents 3 to 24 had accepted the alleged arbitration agreement found in the bye-laws of both the Associations.

23. The definition of an Arbitration agreement as found in Section 7 of the Arbitration and Conciliation Act, 1996 also makes it clear that there must be a defined legal relationship between the parties for the existence of an arbitration agreement. In the case on hand as on the date of the bye-laws of the 1<sup>st</sup> respondent Association as well as the 2<sup>nd</sup> respondent Association, the 4<sup>th</sup> respondent whose election is challenged by the petitioner through arbitration was no way concerned with the respective bye-laws and may not also be aware of the terms and conditions of the respective bye-laws. Therefore, the intention to arbitrate in accordance with the alleged arbitration agreement found in the respective bye-laws would not have arisen for the respondents 3 to 24 as in their individual capacities, as they were never the signatories of the respective bye-laws or the acceptors of the respective bye-laws in writing. Therefore at the outset, this Court is of the



petitioner and the respondents 3 to 24 and hence the dispute cannot be referred to arbitration.

24. Bye-laws of a Society are the internal regulations of the said Society applicable to its Members and is a public document. It is easily accessible to anyone and is not person-centric. In the case of person-centric contracts, the terms and conditions contained therein apply only to the parties of the said contract alone and they are personal in nature. There may also be certain confidential details mentioned in person-centric contracts.

25. Person-centric contracts are not available and accessible easily to the general public at large and if the parties to the said contract choose to keep it confidential amongst themselves, they can do so. Whereas contracts in the nature of bye-laws cannot have the same privilege. There may be numerous persons who may be interested in the bye-laws. The parties interested may be players, staff, members, sports officials etc., and the list can go on and on and it is never ending and predictable. Therefore, the election dispute raised by the petitioner in terms of the bye-laws can only be adjudicated through a public fora (Courts) and not through Arbitral Tribunal which cannot be witnessed by the general public at large and any person interested in the dispute cannot also approach the said Arbitral Tribunal as



he is not a party to the arbitration agreement.

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26. Though there is an implicit reference to non-arbitrability under the Arbitration and Conciliation Act, 1996 but however it does not define arbitrability nor does it specify any set of disputes to be non arbitrable. In this regard, Law has developed in this subject largely through judicial pronouncements.

27. The judgment of the Hon'ble Supreme Court in the case of ***Booz Allen & Hamilton Inc. V. SBI Home Finance Ltd., reported in 2011 5 SCC 532*** is considered a leading authority on this subject. The Hon'ble Supreme Court in the later decision in the case of ***Vidya Drolia V. Durga Trading Corporation*** reported in ***2021 (2) SCC 1*** also had a fresh look at this issue. In ***Booz Allen & Hamilton Inc. V. SBI Home Finance Ltd., reported in 2011 5 SCC 532***, the Supreme Court was faced with a question as to whether an action for an enforcement of mortgage is arbitrable. The Hon'ble Supreme Court answered this question in the negative. But while doing so, it clarified in general terms that the following two broad clauses of disputes are incapable of being resolved in arbitration :



exclusively by a public fora

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2) matters which by necessary implication stand excluded from the purview of a private fora. Within the second category actions for enforcements of rights in rem, which the Court held are “unsuited for arbitration” can only be adjudicated by Courts or public Tribunals.

28. A right in rem, the Hon'ble Supreme Court explained is a right exercisable against the World at large. In contrast, the right in personam is one exercisable against the specific individuals. In personam proceedings are meant to decide the personal rights and interest of the parties named in the action, whereas actions in rem are directed against the property itself and determines the rights of the parties exercisable against the public at large. The latter has an erga omnes effect which means i.e. “towards everyone”

29. The Hon'ble Supreme Court in **Booz Allen's** case held that, traditionally all disputes relating to rights in personam are considered amenable to arbitration; and all rights relating to rights in rem are required to be adjudicated by Courts and public Tribunals. The Hon'ble Supreme Court did clarify that this is not an inflexible rule and that subordinate rights

in personam arising from rights in rem have always been considered



arbitrable. In the course of its analysis, the Hon'ble Supreme Court has also cited examples of various matters, which it considered as non-arbitrable viz.,

- a) Disputes relating to rights and liabilities which give rise to or arise out of criminal offences;
- b) Matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody;
- c) Guardianship matters;
- d) Insolvency and winding up matters;
- e) Testamentary matters (grant of probate, letters of administration and succession certificate); and
- f) Eviction or tenancy matters governed by special statutes where the tenant enjoys the statutory protection against the eviction.

30. On the specific issue before the Hon'ble Supreme Court concerning mortgage actions, the Court held that such proceedings are not arbitrable as they involve the enforcement of right in rem. The Hon'ble Supreme Court also analysed the provisions of the Transfer of property Act, 1882 and the Code of Civil Procedure, 1908 to conclude that these statutes makes it clear that mortgage enforcement actions are required to be decided



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31. In another decision of the Hon'ble Supreme Court in the case of ***Vimal Kishor Shah & Ors. v Jayesh Dinesh Shah & Ors reported in 2016 8 SCC 788***, the issue of arbitrability arose in the context of a dispute inter se amongst the beneficiaries of a Deed of Trust. The Hon'ble Supreme Court held that the disputes between the beneficiaries of the Trust are non arbitrable.

32. The Hon'ble Supreme Court found that the arbitration clause contained in the Trust deed does not satisfy the requirements of Sections 2(b), 2(h) and 7 of the Arbitration and Conciliation Act mainly because the beneficiaries are neither parties nor signatories to the Trust Deed nor there is a separate arbitration agreement amongst them. The Hon'ble Supreme Court while coming to this conclusion relied on its earlier decision in ***Vijay Kumar sharma V. Raghunandan Sharma reported in 2010 (2) SCC 486 .*** In the case on hand also, the respondents 3 to 24 are not parties to the respective bye-laws of the 1<sup>st</sup> and 2<sup>nd</sup> respondent Association and they have also not signed any separate arbitration agreement with the petitioner and therefore, as in the case of ***Vimal Kishor Shah's*** case referred to supra, where a Trust Deed was involved, here also the petitioner has not satisfied



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33. The Hon'ble Supreme Court has dealt with the issue of arbitrability in several cases after *Booz Allen & Hamilton Inc. V. SBI Home Finance Ltd., reported in 2011 5 SCC 532*, especially those relating to allegations of fraud. However, the decision of the Hon'ble Supreme Court in *Vidya Drolia V. Durga Trading Corporation reported in 2021 (2) SCC 1*, is the most comprehensive one on the issue on hand. In *Vidya Drolia's* case, the three Judge Bench of the Hon'ble Supreme Court was required to determine the arbitrability of a landlord-tenant dispute governed solely by the Transfer of property Act. Earlier, a two Judge Bench of the Hon'ble Supreme Court in *Himagni Enterprises vs. Kamaljeet Singh Ahluwalia reported in 2017 10 SCC 706* had answered those questions in the negative. On 28.02.2019 another two Judge Bench of the Hon'ble Supreme Court in *Vidya Drolia case No.1* reported in *2019 20 SCC 406* and disagreed with the ratio laid down in *Himagni's case* and referred the issue for determination by a larger bench.

34. A reference was made to the Larger Bench which was required to answer the following issues :

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(i) The meaning of non arbitrability and when the subject matter of



the dispute is not capable of being resolved through arbitration and (ii) conundrum - “who decides” - whether the Court at the reference stage or the Arbitral Tribunal in the arbitration proceedings would decide the question of non-arbitrability.

35. After a detailed analysis, the three Bench of the Hon'ble Supreme Court in *Vidya Drolia V. Durga Trading Corporation reported in 2021 (2) SCC 1* propounded the fourfold tests for determining when a dispute is non arbitrable.

36. The four elements of the tests of non-arbitrability are :

a) when the cause of action and the subject matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem.

b) when the cause of action and the subject matter of the dispute affects third party rights; have *erga omnes* effect i.e., “towards everyone”; requires centralised adjudication, and mutual adjudication would not be appropriate and enforceable.

c) when the cause of action and the subject matter of the dispute relates to inalienable sovereign and public interest functions of the State and mutual adjudication would be unenforceable; and

d) when the subject matter of the dispute is expressly or by necessary implication non arbitrable as per the Mandatory statute(s).



37. The Hon'ble Supreme Court however clarified that the aforementioned tests are not water-tight compartments. They dovetail and overlap but when applied holistically and pragmatically will help to determine as to whether the dispute is non-arbitrable. In *Vidya Drolia's* case, the Hon'ble Supreme Court has eloquently clarified that only with a view to prevent wastage of public and private resources, a prima facie review of the arbitration agreement is made by the Court under Section 11 to weed out any frivolous or vexatious claims. The decision in *Vidya Drolia's* case has also been fortified by the latest judgment of the Hon'ble Supreme Court in *DLF Home Developers Limited v. Rajapura Homes Private Limited & Anr. reported in 2021 SCC ONLINE SC 781*. and in that decision also it was held that the power under Section 11 of the Arbitration and Conciliation Act does not denude the Court of its judicial functions to look beyond the bare existence of an arbitration clause to cut the deadwood. It was also held in the aforesaid *DLF's* case referred to supra in paragraph 19 that the Court is not expected to act mechanically merely to purport a dispute raised by an applicant at the doors of the chosen Arbitrator. On the contrary, the Court(s) are obliged to apply their mind to the core preliminary issues, albeit, within the framework of Section 11(6-A) of the Act. Such a review is not intended to usurp the jurisdiction of the Arbitral Tribunal but it is aimed to streamline the process of Arbitration. Therefore, it is clear



that even when an Arbitration agreement exists, it would not prevent the Court to decline a prayer for reference if the dispute in question does not correlate to the said agreement. The power of the Arbitral Tribunal under Section 16 of the Arbitration and Conciliation Act to rule on its own jurisdiction will be a futile exercise in cases where the dispute itself is not arbitrable as in the present case. Therefore, the contention of the petitioner that the Court's power under Sections 8 and 11 is only to see the existence of an arbitration agreement and nothing more is rejected by this Court.

38. In the case on hand, the petitioner has challenged the election of the 4<sup>th</sup> respondent as Secretary of the 2<sup>nd</sup> respondent Association through arbitration. There are several members to the 2<sup>nd</sup> respondent Association. There may be members who support the election of the 4<sup>th</sup> respondent as the Secretary and others who may not. Apart from the members, being a public body, there may be others who may be football players, officials and members of the general public and the list is endless who may also be in agreement with the election of the 4<sup>th</sup> respondent as Secretary of the 2<sup>nd</sup> respondent Association. The dispute raised by the petitioner is not a personal dispute and even according to the petitioner, the election of the 4<sup>th</sup> respondent is challenged only in public interest for the sport of football.



39. **Vidya Drolia's** case referred to supra makes it clear that if the subject matter of the dispute affects third parties rights, it is not an arbitrable dispute. Hence, the dispute raised by the petitioner is not arbitrable as the said dispute falls within the public domain and can be adjudicated only by the public fora (Courts). The decision rendered by the Hon'ble Supreme Court in the *Afcons Infrastructure Ltd. V. Cherian Varkey reported in 2010 (8) SCC 24* also makes it clear in paragraph 27(1) and (2) that disputes involving public interest or interest of numerous persons who are not parties before the Court and disputes relating to election of public offices are non arbitrable. The case on hand falls under the said category as the 2<sup>nd</sup> respondent Association is a public Association and election of office bearers to the said Association is only in public interest for development and growth of football in the State of Tamil Nadu. There may be numerous other interested persons who may have active interest in the affairs of the 1<sup>st</sup> and 2<sup>nd</sup> respondent Association as well as the election of its office bearers. The names of the interested persons cannot be specifically ascertained and further they are also not parties to the dispute raised by the petitioner.

40. The dispute raised by the petitioner has also now become a deadwood in view of the fact that the Arbitral Award passed against the 4<sup>th</sup> respondent on 18.11.2017 which is the basis of the dispute has been set



aside by this Court on 26.02.2020 in O.P. No.627 of 2018. Therefore, applying the principles laid down by the Supreme Court in *Vidya Drolia's* case and *DLF's* case, the dispute raised by the petitioner is non arbitrable.

41. The decision relied upon by the learned counsel for the petitioner in *Mayavati Trading Pvt. Ltd., V. Pradyuat Deb Burman reported in 2019 8 SCC 714* has no bearing for the case on hand as the dispute involved in the said decision was not an election dispute involving bye-laws of an association and further in the present case as observed earlier there is no arbitration agreement between the petitioner and the respondents 3 to 24. A Single Bench decision of the Madras High Court also relied upon by the learned counsel for the petitioner in the case of *Tirunelveli District Football Association, v The President, Tamil Nadu Football Association and another reported in 2016 (1) CTC 26* will also not apply to the facts of the present case as that was a decision rendered in a writ petition, which is a discretionary remedy. The learned Single Judge refused to exercise his discretion since the Tamil Nadu Football Association cannot be treated as an instrumentality of State and further there is an alternative remedy for redressal of disputes through arbitration.



hand, a learned Single Judge of this Court in the case of ***Tamil Nadu Football Association vs. Pennar Senior FC*** by its order dated 28.06.2019 in Application No.1775 of 2019 in C.S. No.126 of 2019 held while considering Article 66, 67 and 68 of the 1<sup>st</sup> respondent bye-laws which the petitioner has relied upon here also held that the Arbitral Tribunal referred in those clauses is in the nature of an appellate authority, which can hear only disputes relating to the disciplinary sanctions made against the members by other judicial bodies of the Tamil Nadu Football Association. Therefore, the learned Single Judge held that there is no arbitration agreement between the parties as in that case also election for a District Football Association was being challenged. ***Booz Allen & Hamilton Inc. V. SBI Home Finance Ltd., reported in 2011 5 SCC 532, Vidya Drolia V. Durga Trading Corporation reported in 2021 (2) SCC 1 and DLF Home Developers Limited v. Rajapura Homes Private Limited & Anr*** also supports the contention of the respondents that the present dispute is non arbitrable as the dispute falls within the public domain and is an action in rem as it involves public interest.

43. In ***Utkarsh v. Delhi Bar Association's*** case referred to by the learned counsel for the respondents reported in ***2014 SCC Online Del 878*** also supports the contention of the respondents that the election dispute



raised by the petitioner is a non arbitrable dispute and can be adjudicated only by a competent Court of law.

44. For the foregoing reasons, the dispute raised by the petitioner is a non arbitrable dispute and hence an Arbitrator cannot be appointed as sought for by the petitioner in this petition.

45. In the result, the Original petition is dismissed. In view of the dismissal of O.P. No.563 of 2019 due to the non arbitrability of the dispute, O.A. No.1210 of 2018 filed under Section 9 of the Arbitration and Conciliation Act by the petitioner is also dismissed.

Sd./- A.Q.J.,  
31.01.2022.

//Certified to be true copy//

Dated at Madras this the            day of            2022.

COURT OFFICER(O.S.)

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