



A.Nos.686 & 687 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 04.03.2022	Delivered on 10.08.2022
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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

O.A.Nos.686 & 687 of 2020
in
C.S.No.364 of 2020

The Suit in C.S.No.364 of 2020 has been filed by the Plaintiff to declare that By-law 44 of the third respondent society (Madras Medical Mission) insofar as it bars the members of the society by casting their vote through proxy as illegal, null and void, as the same is contrary to the provisions of the Tamil Nadu Societies Registration Act, 1975, and consequential mandatory injunction has also been prayed for in the suit for the conduct of the election for selection of the members to the Governing Board of the society allowing the members of the society to the cast their vote either in person or through proxy.

2. In the Suit, two Applications have been filed, Application in O.A.No.686 of 2020 has been filed for a direction to the third respondent



society to conduct election, pending finalisation of the suit. Another Application in O.A.No.687 of 2020 has been filed seeking for an interim injunction restraining the Governing Board of the third respondent society from taking any decision regarding the functioning of the posts in the Governing Board are completed pending disposal of the Civil Suit.

3. The facts of the case is as follows:-

The Madras Medical Mission is the Society registered under the provisions of the Tamil Nadu Societies Registration Act, 1975 (hereinafter referred to as 'the Act'). The Society is governed by the provisions of the Act as well as the By-laws governing its objects and the administration in relation to membership and qualification, Register of Members, Election, Office Bearers, Governing Body etc. The society currently has a total membership of 133 life members. The management and the control of the affairs of the Society is vested with the Governing Board which has a maximum number of 21 members duly elected from among the life members of the 3rd respondent society. Seven members of the Governing Board retire every year by rotation. The election of members to the Governing Board of the 3rd respondent Society was periodically held during the last years namely 2017, 2018 &



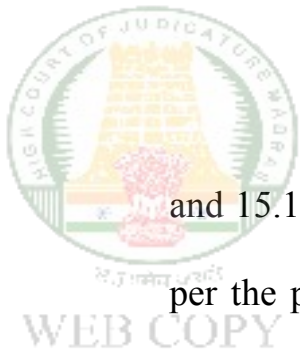
2019. In the elections, as per By-law 44 of the Society, proxy voting system was not allowed, which is contrary to the provisions of the Tamil Nadu Societies Registration Act, 1975 and also the law laid down by this Court. Therefore, the suit has been laid to declare the By-law 44 as illegal and void.

4. During September 2020, seven (7) members of the Governing Board retired after completion of 3 years tenure in terms of the provisions of the By-laws. Consequent upon their retirement, the Interim Secretary of the 3rd respondent Society issued notice on 12.11.2020 in terms of By-law 42 calling for nomination to fill up 7 vacancies and the last date for filing of nomination was stated to be of 26.11.2020. In the communication, it was further stated that the election will be held during the 30th Annual General Meeting, the date, venue and the time will be intimated later. The applicant is more than 90 years old and many members are more than 70 years old and they will be in a position to physically present and vote in the Annual General Meeting for electing the members of the Governing Board. Therefore, the grievance of the applicant is that the members of the 3rd respondent Society are being prevented from casting their vote through proxy in view of the prohibition as contained in By-law 44 of the Society, their participation in the



Annual General Meeting would be denied despite they being the life members of the Society. Hence, the applicant has filed the present Suit to declare that By-law 44 of the third respondent society insofar as it bars the members of the society by casting their vote through proxy as illegal, null and void, as the same is contrary to the provisions of the Tamil Nadu Societies Registration Act, 1975.

5. In the meanwhile, four members of the third respondent society have been suspended and they have approached this Court by filing a Suit in C.S.No.329 of 2020, in which this Court while granting an interim injunction, had permitted the plaintiffs therein to participate in the election process till the matter is heard on merits. Yet another suit has also been filed by newly inducted 23 members of the third respondent society by filing the suit in C.S.No.389 of 2020. This Court while deciding the applications filed in C.S.No.329 of 2020 and C.S.No.389 of 2020 has not decided the substantive issue whether four members were to be suspended from the membership of the society and whether the 23 members had a right to be inducted as life members of the society. This Court, in an interim application, was requested to decide whether the decision taken by the Governing Board on 19.10.2020



and 15.10.2020 to suspend 4 members and to induct 23 new members was as per the provisions of the by-law or not. This Court was of the *prima facie* view that the decision of the Governing Board cannot be faulted with and therefore, there was no determination on any substantive question of fact or law by this Court regarding the right of the 23 members to be admitted into the society of the membership of the society.

6. Therefore, in O.A.No.686 of 2021, after hearing the parties, this Court by order dated 29.04.2021, had appointed the Hon'ble Mr.Justice K.Kannan (Retd), as a Judge Commissioner to conduct the election to the Governing Body of the third respondent society in terms of the By-laws of the society and also issued certain directions.

7. Mr.Vijay Narayanan, the learned Senior counsel appearing for Mr.Hari Radhakrishnan, learned counsel appearing for the applicant submitted that this Court by order dated 29.04.2021, directed the conduct of elections to the vacancies that had arisen in the Governing Board of the society and had appointed a Judge Commissioner to oversee the elections and submit his report in a sealed cover. Further, the learned Senior counsel



submitted that in pursuance of the said direction, elections were held on 29.06.2021 and the Judge Commissioner has submitted his report dated 01.07.2021 before this Court and in his report, four categories of results viz (a) to (d) were notified. The learned Senior counsel further submitted that the Judge Commissioner, in his report dated 01.07.2021, result pertaining to 'a' category has been declared, however, the other results viz (b) to (d) were not declared and were kept in a sealed cover. The learned Senior counsel submitted that inclusion of 23 new members and the decision of suspension of 4 members have attained finality in the decision taken in the Extra-ordinary General Meeting (EGM) held on 23.04.2021 and four resolutions were declared. Further the learned Senior counsel submitted that it is a settled law that General Body of the society is supreme and therefore, its decision has to be given full effect to, unless any obvious infraction of the By-law or the Society's Registration Act or Rules is noticed.

8. The learned Senior counsel after relying on the decision of the Division Bench of this Court in the case of *M.Arumugam vs. State of Tamil Nadu & Ors.*, reported in *MANU/TN/0811/2013*, and the decision of Delhi High Court in the case of *Supreme Court Bar Association vs. Registrar of*



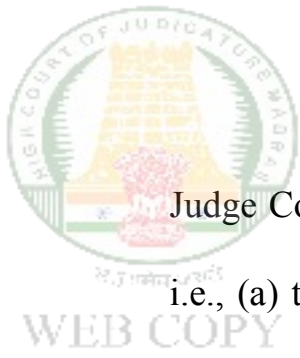
Societies reported in **2012 SCC ONLINE DEL 6415** submitted that the decision taken by the General Body in its EGM held on 23.04.2021 has to be considered to be final and binding on the entire society and therefore, as per the decision taken in the General Body taken in its meeting held on 23.04.2021, result (d) as mentioned in the Judge Commissioner's report dated 01.07.2021, has to be declared as final result of the election. Further, the learned Senior counsel submitted that it is brought to the attention of this Court that the interim Secretary of the third respondent society had issued a notice dated 01.02.2022 stating that the interim Secretary unilaterally declared the members as being elected to the Governing Board and the said unilateral declaration was contrary to the sealed cover procedure, which was ordered by this Court in its order dated 29.04.2021 in O.A.No.686 of 2021. This action of the interim Secretary of the society is willful disobedience of the order of this Court, dated 29.04.2021 and therefore, the applicant has filed an application under order XXXIX Rule 2A for punishing the interim Secretary of the society. Therefore, the learned Senior counsel submitted that in terms of the decision taken in the EGM on 23.04.2021 and the subsequent stay granted by the Division Bench of this Court in OSA.No.316 of 2020, the votes of the 23 newly inducted members would be excluded and



the votes of the 4 suspended members would have to be included. The learned Senior counsel therefore submitted that as per the report of the Judge Commissioner, the category (d) after counting the votes of the suspended members and excluding the votes of the newly inducted members may be declared as the final result of the election held to the Governing Board of the society on 29.06.2021.

9. Heard the learned Special Government Pleader appearing for the respondents 1 and 2.

10. Mr.T.Silambannan, learned Senior counsel appearing for Mr.V.Hallal Ben, learned counsel appearing for the third respondent submitted that the primary reason for deferring the elections by the third respondent society was that so many applications were pending in the suits, where certain issues were to be determined by the Court. As directed by this Court, Hon'ble Justice Mr.K.Kannan (Retd), Judge Commissioner, has conducted the election on 29.06.2021, which was not disputed by any party and the Judge Commissioner has submitted his report on 01.07.2021 before this Court and gave copies of the report to all the contesting parties. The



Judge Commissioner has given four different category of results in his report i.e., (a) to (d). The learned Senior counsel further submitted that except the names of the candidates elected as per the category (a), none other categories viz., (b) to (d) were declared in the report and the same are kept in sealed covers and not published.

11. The primary contention of the learned Senior counsel appearing for the third respondent is that for the smooth functioning of the third respondent society, out of 21 members of the society, every year 7 members would have to retire after completing three years term on 31.10.2021 and as on date, the strength of the Governing Board would not even satisfy the quorum specified in By-law 86 of the society and therefore, elections have to be conducted to elect the seven members of the Governing Board from the members of the society. The learned Senior counsel further submitted that four suspended members challenged their suspension by filing applications in O.A.Nos.624 & 625 of 2020 in C.S.No.329 of 2020, in which, this Court upheld the suspension of four members of the society and also ordered an enquiry into the corruption and irregularities by a competent person. Aggrieved against the order, the suspended members have filed an appeal



before the Division Bench of this Court and the Division Bench of this Court has refused to stay the order of suspension and thus on the date of election, the suspension was in force and hence, their four votes cannot be taken into account in the tally of votes. In the meantime, for enquiring into the corruption and irregularities committed by the suspended members, a retired Chief Commissioner, Income Tax, was appointed as an enquiry officer, who in turn, enquired and held that the four suspended members have been committed guilty and this has not been challenged by the four suspended members till date.

12. Further, the learned Senior counsel submitted that the induction of the 23 new members into the society was challenged by way of O.A.No.734 & 735 of 2020 in C.S.No.389 of 2020, and this Court upheld the induction of 23 new members as valid, against which, an appeal has been preferred in O.S.A.No.329 of 2021 and the Division Bench of this Court refused to stay the order of the learned Single Judge of this Court, which means the induction of the 23 new members into the society as valid and on the date of election, the induction of 23 new members is legal and their votes have to be taken into account in the tally of votes.



13. Further, the learned Senior counsel submitted that the argument of the applicant is that they have obtained an interim stay in C.M.P.No.18481 of 2021 in O.S.A.No.316 of 2021, wherein the Division Bench of this Court stayed the order of the learned Single Judge in O.A.No.251 of 2021 in C.S.No.159 of 2021 on 01.10.2021 for conducting the Extraordinary General Body Meeting held between 20.04.2021 and 23.04.2021. However, the stay does not validate the Extraordinary General Body which *per se* is illegal and the reason for granting the stay would not stand in the way of the Court declaring the results as per category (c). Further, the learned Senior counsel submitted that the judicial orders upholding the suspension of four members in O.A.Nos.624 & 625 of 2020 in C.S.No.329 of 2020, likewise the induction of 23 new members being held valid in O.A.Nos.734 & 735 of 2020 in C.S.No.389 of 2020, which are much after the Extraordinary General Body held from 20.04.2021 to 23.04.2021. It is brought to the attention of this court that the applicant is the mother of the first suspended member and brother of second suspended member. Therefore, when there are judicial orders, which have allowed the suspension of 4 members and validated the induction of 23 new members, this Court has to declare the result of category (c) for upholding the judicial supremacy.



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14. Heard the learned counsel appearing for both the parties and perused the materials placed on record.

15. The Madras Medical Mission is the Society registered under the provisions of the Tamil Nadu Societies Registration Act, 1975. Out of 21 members of the Governing Body of the society, seven (7) members of the Board retire every year by rotation after completing three years term and therefore elections have to be conducted during Annual General Meeting to fill up the vacancies, which will have to be elected by the members of the Governing Board of the third respondent society. In the elections, proxy voting was not allowed in view of the specific bar as contained in By-law 44 of the society. In this regard, the applicant has contended that such By-law 44 was contrary to the provisions of the Tamil Nadu Societies Registration Act, and law laid down by this Court. In the said circumstances, the Suit has been filed to declare the By-law 44 as illegal and void. Along with the Suit, Application in O.A.No.686 of 2020 has been filed for a direction to the third respondent society to conduct election, pending finalisation of the suit.



16. In the meanwhile, irregularities committed by four-members of the third respondent society have been suspended and on 19.10.2020, inducted 23 new members of the society by the Governing Board. Therefore, this Court, after considering the submissions of all parties, clarified that it was open to the members of the society to approach the Judge Commissioner to be appointed by this Court with any legitimate objection, issues that touch upon the election process in terms of the By-laws of the society and the same may be considered by the learned Judge Commissioner. This Court has given further directions by appointing the Hon'ble Mr.Justice K.Kannan (Retd)., as a Judge Commissioner to conduct the election to the Governing Body of the third respondent society in terms of the By-laws of the society. Thus, the Judge Commissioner has conducted the elections on 29.06.2021 and the report has been filed before the Court on 01.07.2021. In the report, the Judge Commissioner has given four different category of results, viz., (a) to (d) which reads as follows:-

(a) The first category of result are the candidates selected out of votes polled from out of the undisputed members i.e., total registered members minus (suspended members plus remaining newly inducted members);



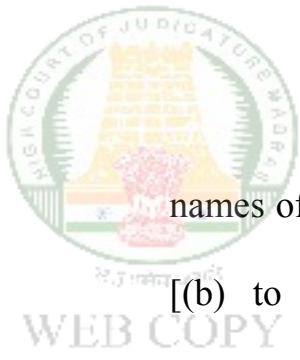
(b) the second candidates are of the persons who have registered that includes the newly inducted members and suspended members and whose votes are polled together that yield to a result which is not disclosed here, but to be kept in a separate cover;

(c) The third category the votes polled by all registered members, including the newly inducted members, excluding the suspended members; and

(d) the fourth category is of all registered candidates, including the suspended members excluding the newly inducted members.

17. The only issue for consideration in this application is as to which of the results reported by the learned Judge Commissioner has to be published and declared?

18. Admittedly, the election conducted by the learned Judge Commissioner is not disputed by any of the parties. In the report, except the



names of the candidates elected as per the category (a), none other categories [(b) to (d)] were declared though there was some permutations and combinations of exclusion and inclusion of candidates, if the categories changed. Further in the report it is stated that the results of categories (b) to (d) are kept in sealed covers and not published.

19. In the report, it is stated that the category (c) candidates are of all registered members including the newly inducted members, excluding the suspended members, likewise category (d) candidates are all registered members including the suspended members excluding the newly inducted members.

20. It is true that the four members of the society was suspended which was challenged by filing O.A.Nos.624 & 625 of 2020 in C.S.No.329 of 2020 and the same is pending till now and therefore, the question regarding on the date of election, the suspension was in force and hence, four suspended members' votes cannot be taken into account in the tally of votes, cannot be accepted.



21. Similarly, newly 23 members were inducted for the society on 19.10.2020, which was also challenged and the same was also pending before the Division Bench of this Court in O.S.A.No.329 of 2021, in which the Division Bench of this Court refused to grant the stay of the order passed by the learned Single Judge of this Court and thereby, the contention of the learned Senior counsel for the third respondent that the induction of 23 new members is legal, is not merit acceptance.

22. Thus, the issues arising whether the four suspended members were to be suspended from the membership of the society and whether the 23 members had a right to be inducted as life members of the society had not attained finality in the Suits.

23. Therefore, the dehors the challenges made in pending applications/suits before this Court, I am of the considered view that the category (b) of the result of the learned Judge Commissioner's report is perfectly valid for smooth functioning the society and therefore the result of **category (b)** reported by the learned Judge Commissioner may be declared and published. Accordingly, O.A.No.686 of 2020 is disposed of.



A.Nos.686 & 687 of 2020

O.A.No.687 of 2020

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24. In view of the order passed in the application in O.A.No.686 of 2020, dated 29.04.2021, elections were conducted by the learned Judge Commissioner and the results of the report were produced before this Court on 01.10.2021 and the category of the results (a) to (d) are also ordered in O.A.No.686 of 2020 and therefore, nothing survives for consideration in this application and accordingly, the same stands rejected.

25. In the result, O.A.Nos. 686 of 2020 is disposed of and O.A.No.687 of 2020 stands rejected. No costs.

10.08.2022

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Index : Yes/No

Internet: Yes/No



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A.Nos.686 & 687 of 2020

P.VELMURUGAN, J

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Pre-Delivery Order in
O.A.Nos.686 & 687 of 2020
in
C.S.No.364 of 2020

10.08.2022