



A.No.725 of 2021

Reserved on 17.03.2022	Delivered on 29.08.2022
---	--

P.VELMURUGAN, J.,

A.No.4529 of 2021 & A.No.781 of 2022
O.A.No.725 of 2021
in
C.S.No.339 of 2021

Civil Suit No.339 of 2021 has been filed to declare the notice issued by the Governing Board of the first defendant dated 13.10.2021 and the notice issued at the request of the third respondent (requisitionist) on 28.10.2021 is null and void. A permanent injunction has also been sought for in the suit with regard to the said meetings as per the aforesaid notices. Pending suit, Application in O.A.No.725 of 2021 has been filed.

2. The meeting convened by the Governing Board was scheduled to take place on 04.12.2021 and the meeting convened by the 3rd respondent was scheduled to take place on 22.11.2021. This Court after hearing the parties ordered that the exparte relief sought for in the application cannot be granted and only after counters were filed, the said application can be disposed of on



merits and in accordance with law. However, this Court deemed fit to pass the following directions as interim measure to protect the interest of both the parties to the litigation:-

(A) The meeting scheduled to take place at the instance of the third respondent on 22.11.2021 shall go on without hindrance, however, it shall be subject to the result of this Court in O.A.No.725 of 2021.

(B) Similarly the meeting convened by the first respondent scheduled to take place on 04.12.2021 shall also be subject to the result of O.A.No.725 of 2021.

3. Pursuant to the directions of this Court, meetings have been conducted by both the third respondent and the Governing Board respectively and certain resolutions have been passed.

4. The learned Senior counsel appearing for the applicant would submit that calling of meetings by both the parties viz., one by third respondent on 22.11.2021 and the another by the Governing Board on 04.12.2021 are in grave contravention to the provisions of the Tamil Nadu Societies Registration Act, 1975 (hereinafter referred to as 'Act') and the Bye-laws of the society. Further,



the learned Senior counsel would submit that it is settled law that Bye-laws of the society are the custodian of the society and all members are bound by the same, and in this regard, to support the said contention, the learned Senior counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Zoroastrian Co-op Societies Ltd., vs. District Registrar, (2005) 5 SCC 632***. The learned Senior counsel would further submit that the first respondent society is a voluntary society and bound by its Bye-laws and the Governing Board of the society is empowered to manage the affairs of the society and as per Bye-law Nos.21, 40, 62 and 64, it has the power to create or appoint new posts and remove members of the society and the said power cannot be usurped by the General Body of the society by way of a resolution and if the said practice is permitted, the Bye-laws would be rendered as nullity and therefore, in such circumstances, the resolutions of the meetings dated 22.11.2021 and 04.12.2021 are null and void and an order of injunction is warranted restraining the respondents 1 to 3 from giving effect to the same.

5. To support the said contention, the learned Senior counsel relying upon the decision of the Hon'ble Supreme Court in the case of ***PR Venketarama vs. Naresh*** reported in ***2020 SCC Online Madras 1903***



submitted that when the Central Council has power to disaffiliate a member, the said power cannot be overtaken by the General Body and the resolutions passed were found to be contrary to bye-laws and constitution of federation.

6. Further, the learned Senior counsel would submit that the meeting appears to be flawed on the basis of agenda that has been discussed and passed in the meeting wherein the Bye-laws of the Federation confers the right to disaffiliate a member with the Central Council. It is submitted that a reading of the Article 16(b)(4) of the Bye-laws would indicate that the Central Council has the power to disaffiliate any member of the Federation for committing misconduct or otherwise and thereafter, refer the same to the General Body in its next available meeting for its consideration and on the basis of the decision received from the Central council, the members of the General Body are given the powers under Article 9 of the Bye-laws of the association to disaffiliate members and that the General Body cannot independently disaffiliate any member, since it is the Central Council which is the executive body of the Federation vested with all the powers of the Federation including disaffiliation of members as well.



WEB COPY

7. The learned Senior counsel would submit that the resolutions passed in both the meetings are very vague and unsubstantiated allegations were made against the Secretary and one Mr.Babu Daniel and the members were removed from their respective posts without any material particulars of any dates and events corroborating the said allegations, which is highly unwarranted. To support the said contention, the learned Senior counsel placed reliance on the decision of the Division Bench of the Bombay High Court in the case of ***Dinkarrao vs. State of Maharashtra*** reported in ***1997 3 MHLJ 129***. Therefore, the learned Senior counsel would submit that first respondent society and the third respondent calling for EGM on 04.12.2021 and 22.11.2021 respectively is bad in law, as agenda of the proposed EGM cannot be legally enforced, as they would be in conflict with the Act and Bye-laws of the Society. Further, it is submitted that the impugned notice by the third respondent calling for EGM on 22.11.2021 is in clear violation of Bye-law 89 and Section 28(3) and 26(2) and Rule 25(3) of the Act and the impugned notice dated 28.10.2021 needs to be declared as null and void. Therefore, the learned Senior counsel would submit that the impugned resolutions purporting to remove the office bearers without even conducting any enquiry against them



but on the basis of mere votes cast by members is against the principles of equity, fairness and natural justice. In such circumstances, it is imperative in the interest of safeguarding the sanctity of the Bye-laws of the society, that the resolutions passed in both the meetings were not to be given effect, as the same are null and void and in contravention to the Bye-laws of the society.

8. The learned counsel appearing for the second respondent adopted the submission of the learned counsel for the first respondent and submitted that the right to membership in any society would have to be tested on the touchstone of the Bye-laws and not on anything else and in this regard the learned counsel placed reliance on the following judgments of the Hon'ble Supreme Court in the cases of ***Zoroastrian Co-operative Housing Society Ltd., & Anr., vs. District Registrar Cooperative Societies (Urban) & Ors.***, reported in ***CDJ 2005 SC 407*** and ***Swati Ulhas Kerkar & Ors., vs. Sanjay Walavalkar & Ors.***, reported in ***CDJ 2021 SC 101*** and submitted that all the members can exercise their right on the touchstone of the Bye-laws be it the third respondent on whose notice, the questionable EGM was to be held. Further, the learned counsel submitted that the third respondent by way of requisition notice dated 16.09.2021 stated that he has been authorized by 39 members to call for the



meeting and wants the Governing Board to call an EGM, but the fact remains that except for 3 requisitionists, all other 36 requisitionists were requisitionist for the earlier EGMs dated 17.08.2019 and 23.04.2021, against which C.S.Nos.523 of 2019 and C.S.No.159 of 2021 have been filed, wherein this Court had intervened and stayed the EGM.

9. Further the learned counsel submitted that as per ad-interim order passed by this Court on 19.11.2021, the third respondent conducted the EGM on 22.11.2021 virtually in which three resolutions were passed by a majority who supposedly logged in and likewise, the EGM called by the first respondent society was also conducted on 04.12.2021, as per the Bye-laws of the society, but the resolutions were defeated by a majority of the members. The learned counsel further submitted that both the EGM held on 22.11.2021 and 04.12.2021 is in grave contravention to the provisions of the Act and the Bye-laws of the society, as the resolutions that were to be decided would be in clear violation of the Bye-laws and the Act. Further, it is submitted that if this Court decides that the resolutions to be decided are not *ultra virus*, then this Court has to decide which of those two meetings was right and therefore, it is submitted that this Court cannot decide to declare either of the two meetings as



valid, as there is no relief sought for in the application in O.A.No.725 of 2021.

Further, the learned counsel submitted that the resolutions that have been asked to be taken is in clear violation of Sections 2(a), 15(1), of the Act and Bye-law Nos.21,35,40,46,62,64 & 66A of the Society. Further, the learned counsel submitted that the meeting called on 22.11.2021 by the third respondent is null and void, as it is in violation of Section 28 (1) and (2) of the Act and Bye-law 78 and 89 of the Society Bye-laws.

10. It is further submitted by the learned counsel that in the letter dated 27.10.2020, issued by the Secretary to Government, Registration Department, certain directives were given to all Registrars of Societies to grant permission to societies who have sought permission to conduct their Annual General Meeting for the year 2019-20 through a virtual meeting and therefore, as per circular dated 27.10.2020, the notices dated 31.10.2020 and 07.11.2020, calling for a meeting, should have been issued after seeking permission and approval from the Registrar of societies, which they have not done and it is in pure violation of the circulars and also the third respondent has not stated, as how they would satisfy the other conditions of the circular. Therefore, the learned counsel submitted that the conduct of the EGM by the third respondent



through video conferencing is impermissible, as the same may lead to irreversible fallacies. Further, the learned counsel submitted that all members of the society have to be served with EGM notice dated 28.10.2021, but it was not done by the third respondent which is in clear violation of Section 28(3) and 26(2) of the Act. The learned counsel submitted that the EGM called by the third respondent on 22.11.2021 is illegal as the same was in contravention of Bye-law 78 of the Society and Section 28 of the Act and therefore, this Court may declare that the meeting called by the Governing Board on 04.12.2021 of the first respondent as valid.

11. Mr.Vijay Narayan, the learned Senior counsel appearing for Mr.Hari Radhakrishnan learned counsel for the third respondent submitted that when the applicant is trying to protect the interest of the society, notice calling for an EGM has to be served on all the members of the society. It is mandatory that Order 1 Rule 8 of the CPC has to be followed and without doing so, no relief could be granted to the individual concerned and this view has been reaffirmed by this Court in the case of *Asst., Commissioner vs. Nattamai K.S.Ellappa Mudaliyar* reported in *AIR 1987 Mad., 187* and therefore, in the absence of such procedure to be followed, the Suit is liable to be rejected in *limine*.



Further, the learned Senior counsel submitted that the suit is not maintainable for non-joinder of necessary parties in terms of provisions of Order 9, Rule 1 of CPC.

12. The learned Senior counsel further submitted that as per Bye-law 78 of the society, the Governing Board would have to call for the meeting in accordance with a requisition through virtual mode and cannot add or substitute any item in the requisition, but however, the Governing Board has decided to conduct the meeting physically instead of virtual and added two more agendas, which did not form part of the original requisition and therefore, the learned Senior counsel submitted that the decision of the Governing Board to conduct the EGM on 04.12.2021, is not in accordance with the requisition made by the requisitionists. Further, learned Senior counsel submitted that in terms of clarification, dated 27.10.2020, issued by the Secretary to Government, Commercial Taxes and Registration Department under Section 26 and 28 of the Act, the EGM could be conducted through virtual means and also stated that there is no bar to conduct AGM through virtual or electronic platforms and therefore, it is clear that there is no need to obtain prior permission or consent



from the Registrar. The learned Senior counsel submitted that the virtual meeting and e-voting are being facilitated by M/s. Central Depository Services (India) Ltd., who is the service provider authorized by the Ministry of Corporate affairs, Government of India and therefore, the contention of the applicant that the procedure of virtual hearing and e-voting is not fair and secure, does not merit acceptance and the possibility of manipulation of e-voting cannot arise. It is submitted that the Board is only a convenient agency appointed to transact the business of the society on behalf of the society and the Board does not have and cannot have powers larger than that of the General body which created it and it derives its strength only from the larger body and therefore, the learned Senior counsel by placing reliance on the judgment of the Division Bench of this Court in the case of *M.Arumugam vs State of Tamil Nadu* reported in *Manu/TN/0811/2013*, submitted that the powers vested with the General Body are supreme and the decision taken by the Board is binding on the members and therefore, the submission of the applicant that the General Body is trying to usurp the powers of the Governing Board as per the Bye-law is devoid of merits. In this regard, the learned Senior counsel placed reliance on the judgment of the Delhi High Court in the case of *Supreme Court Bar Association vs. Registrar of Societies* reported in *2012 SCC Online Del 6415*



to support the contention.

WEB COPY

13. The learned Senior counsel further submitted that as per interim order of this Court, the EGM scheduled on 22.11.2021, has been conducted and therefore, the submission of the applicant that the legality and sustainability of the agendas forming part of the EGM may be held to be not maintainable. Further, it is submitted that the issue regarding appointment of CEO and CFO for managing and administering the medical college was already considered and approved by the Governing Board and thus, the General Body is trying to usurp the powers of the Governing Board is incorrect. It is submitted that the Governing Board of the society has been empowered to manage the affairs of the society and as per Bye-law, it has the power to create or appoint new posts and remove the interim Secretary of the society, as there is no provision in the Bye-laws for indefinitely having that post, likewise PIMS Committee has been dissolved by the Governing Board, consequent thereof, Mr.Babu Danial member of the PIMS committee has been removed and therefore, it is submitted that EGM scheduled on 22.11.2021 may be held to be validly conducted and thus Application in O.A.No.725 of 2021 is liable to be dismissed.



WEB COPY

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

15. The first respondent, the Madras Medical Mission, is a society registered under the Tamil Nadu Societies Registration Act, 1975; second respondent is the Honorary Secretary of the society; applicant is the life member of the society. The third respondent/member of the society by notice dated 28.10.2021 notified that the EGM of the society will be conducted on 22.11.2021 to the members of the society and similarly the Governing Board of the society also issued notice dated 13.10.2021 calling for an EGM to be conducted on 04.12.2021, against which the applicant has filed the Suit in C.S.No.389 of 2021 to declare the notices dated 13.10.2021 and 28.10.2021 are null and void and a permanent injunction has also been sought for in the suit relating to the said meetings as per the aforesaid notices. Pending Suit, the applicant has filed an application in O.A.No.725 of 2021 seeking for an Ad-interim injunction restraining the respondents 1 to 3 from giving effect to the notices dated 13.10.2021 and 28.10.2021.



16. In the Application, this Court by order dated 19.11.2021, opined that the matter has to be heard at length and therefore, the exparte relief cannot be granted and only after counters were filed, the said application can be disposed of on merits and in accordance with law. However, this Court deemed it fit to pass the following directions as an interim measure to protect the interest of both the parties to the litigation:-

(a) The meeting scheduled to take place at the instance of the third respondent/defendant on 22.11.2021 shall go on without hindrance, however, it shall be subject to the result of this Court in O.A.No.725 of 2021.

(b) Similarly, the meeting convened by the first respondent/defendant scheduled to take place on 04.12.2021 shall also be subject to the result of O.A.No.725 of 2021.

17. Pursuant to the directions of this Court dated 19.11.2021, both the meetings have been conducted and certain resolutions have been passed.

18. Thereafter, the applicant has filed an application in A.No.4529 of 2021 seeking to punish the third respondent/third defendant for their willful disobedience and defiance of the order of this Court dated 19.11.2021 in



A.No.725 of 2021.

O.A.No.725 of 2021. Similarly the third respondent has also filed an Application in A.No.781 of 2022 seeking to punish the third respondent/second defendant for his willful disobedience and defiance of the order of this Court dated 19.11.2021 in O.A.No.725 of 2021.

19. The question that now arise for consideration is as to whether which of the EGM meetings conducted by parties is valid, even though this Court permitted the parties to conduct the EGM meeting?

20. Admittedly, this Court by order dated 19.11.2021, directed both the parties to conduct the EGM meetings as an interim measure to protect the interest of both the parties to the litigation and it is settled legal proposition of law that the question which arise for consideration in this matter cannot be decided in an application filed under Order XIV Rule 8 of the Original Side Rules read with Order XXXIX Rule 1 & 2 of CPC. Originally if the relief sought for in the application is granted, it would amount to granting the main relief sought for in the Suit. Further, it is pointed out that this Court had already granted an interim measure that both the meetings scheduled to be conducted on 22.11.2021 and 04.12.2021 can proceed without hindrance, however it shall be subject to the result of this Court in O.A.No.725 of 2021,



A.No.725 of 2021

Thus the relief sought for in O.A.No.725 of 2021 cannot be granted at an early stage, but however, it can be decided only after a full fledged trial and hence, the application is liable to be dismissed.

21. In view of the above, nothing survives for consideration in this application and accordingly, the Application in O.A.No.725 of 2021 is dismissed as infructuous.

A.No.4529 of 2021 & A.No.781 of 2022

22. Both the applications have been filed Under Order 39 Rule 2A CPC to punish the third respondent/third defendant and third respondent/second defendant in the respective applications for their willful disobedience and defiance of the order of this Court dated 19.11.2021 in O.A.No.725 of 2021.

23. While considering an application under Order 39 Rule 2A, the court cannot construe the order in regard to which disobedience/breach is alleged, as creating an obligation to do something which is not mentioned in the 'order', on surmises, suspicions and inferences. The power under Rule 2A should be



A.No.725 of 2021

exercised with great caution and responsibility.

WEB COPY

24. Admittedly, this Court by order dated 19.11.2021, granted direction only as an interim measure to protect the interest of both the parties and there is no specific order of interim injunction and therefore, issue raised by both the parties that there is willful disobedience of order of this Court does not merit acceptance. Further, in the said order dated 19.11.2021, it is stated that both the meetings shall go on without hindrance, however, it shall be subject to the result of O.A.No.725 of 2021. Though O.A.No.725 of 2021, is dismissed, resolutions passed in both the meetings is stayed till the disposal of the main Suit. Accordingly, Applications in A.No.4529 of 2021 & A.No.781 of 2022 are closed.

In the result:-

- (a) Application in O.A.No.725 of 2021 is dismissed as infructuous.
- (b) Applications in A.No.4529 of 2021 & A.No.781 of 2022 are closed.

29.08.2022

pbn
Index : Yes/No
Internet: Yes/No

17/19



WEB COPY



A.No.725 of 2021



WEB COPY



A.No.725 of 2021

P.VELMURUGAN, J

pbn

Pre-Delivery Order in
A.No.4529 of 2021 & A.No.781 of 2022
O.A.No.725 of 2021
in
C.S.No.339 of 2021

29.08.2022