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O.A.No.813 of 2022
and A.Nos.5927 & 5928 of 2022
in C.S.No.271 of 2022

<i>Reserved on</i>	<i>12.04.2023</i>
<i>Delivered on</i>	<i>05.06.2023</i>

K.KUMARESH BABU, J.

These applications have been filed by the applicant seeking for various reliefs as follows:

(i)O.A.No.813 of 2022 has been filed to pass an order of interim injunction restraining the respondent/defendant their men, agents, servants, employees, members or any person claiming through the respondent/defendant in any manner interfering with the petitioner/plaintiffs sole proprietors continued club membership rights under Membership No.IM 589 with the respondent/defendant pending disposal of the above suit.



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(ii)A.No.5927 of 2022 has been filed to pass an order to suspend the termination and annulment of applicant/plaintiff membership number IMG 002 by the respondent/defendant vide impugned letter dated 20.10.2022 of the respondent/defendant and consequently permit the applicant/plaintiffs sole proprietors continued club membership rights under Membership No.IM 589 with the respondent/defendant pending disposal of the above suit.

(iii)A.No.5928 of 2022 has been filed to pass an order granting leave to the applicant/plaintiff to institute a separate suit against the defendant and or their Executive Committee/General Committee members for the damages and other rights arising out of the same cause of action.

2.Heard Mr.George Cheriyan, learned counsel for the applicant and Mr.Gautam S.Raman, learned counsel for the respondent.



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3.Mr.George Cheriyan, learned counsel would submit that the applicant is the sole proprietor of N.G.George and Associates. Earlier his father N.G.George Senior had promoted the aforesaid proprietorship concern which after his death is being managed by N.G.George Junior, the present applicant herein. The respondent had offered institution membership in the year 1978 and such membership had been granted in perpetuity. The applicant's father had made an application for institution membership of the firm N.G.George and Associates and were also granted such membership bearing membership No.IMG 002 for Mr.N.George Senior. Every institution member can nominate a member who shall enjoy the benefits of the first respondent club. On the demise of N.G.George Senior, his wife Mrs.Valsa George was granted membership No.IM 609 as nominee of N.G.George and Associates. During the year 2001, the mother of the applicant gave up a membership as a nominee and the applicant N.G.George Junior was nominated and was granted membership No.IM 589.



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4.He would further submit that there has been no default in payment of any bills of the club or any outstanding dues as regards to the institution membership.

However, by letter dated 02.11.2019, the applicant had been informed that the institution that was granted membership was not in good standing and had given 7 days time to show cause and present reasons for revocation of suspension.

Immediately on receipt of such notice, the applicant had in detailed replied that the institution has been performing very well and therefore sought revocation of the order of suspension. The said reply had also been followed up with various reminder letters. The applicant was in receipt of a mail dated 12.12.2019 calling upon him to produce various documents to substantiate his claim which has also been duly replied to by subsequent communications.

5.Thereafter being satisfied with the explanations given by the applicant, the General Committee in its meeting held on 20.01.2020, after recording such satisfactory explanations had revoked the suspension of the applicant, the nominee



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of N.G.George and Associates with immediate effect. However, four of the General Committee members viz., Mrs.Sanjay Shroff, Mr.N.Kumar, Mr.Vignesh Baskar and Mr.K.Manikandan had expressed their assent in revoking the order of suspension. Pursuant to the said revocation, the applicant by letter dated 20.01.2020 intimated that the applicant will not initiate any illegal proceedings against the club.

6.While that be so, the applicant had received a letter dated 23.08.2022 stating that the institution membership of N.G.George and Associates has been taken up for review and called upon the applicant to meet the respondent/defendant on 01.09.2022. The applicant had sought time by his letter dated 30.08.2022 which was responded by the respondent by letter dated 12.09.2022 calling upon the applicant to meet the Executive Committee on 19.09.2022, since there are several infirmities, the same has also been replied to by the applicant. However, when the applicant had gone to the club to attend the meeting, the Executive Committee



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members were not present except the Honorary Secretary. By letter dated 20.10.2022, the applicant was informed that the membership has been terminated.

Being aggrieved against the same, the present suit had been filed and these applications have also been filed seeking various interim reliefs.

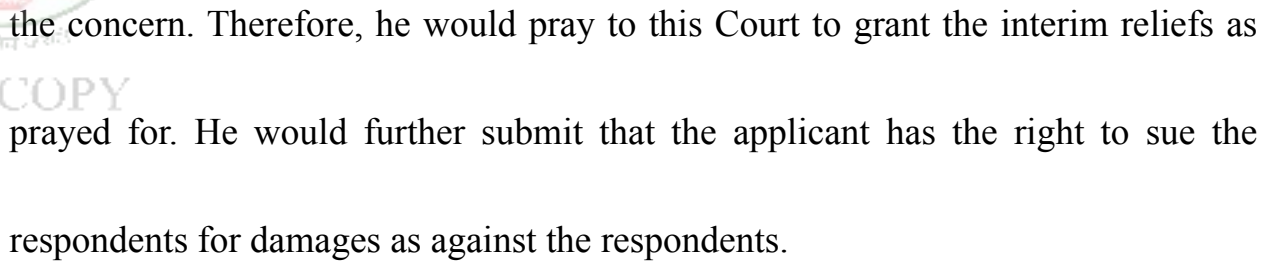
7.Mr.George Cheriyan, learned counsel for the applicant would submit that at the outset alleged meeting with the Executive Committee at the first instance did not take place, it was only the Honorary Secretary of the Club who had met the applicant. Secondly, he would submit that the Executive Committee had no authority whatsoever to decide on the membership issues. Only the General Committee can take a decision. Admittedly, notice dated 23.08.2022 had been issued calling upon the applicant for a meeting at the club office. A further letter dated 12.09.2022 which after analysing the reply, the Secretary of the Club had called upon the applicant to appear before the Executive Committee on 19.09.2022



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on which date, only the Secretary had met the applicant and not the Executive Committee members.

8. Be that as it may, the Executive Committee does not have the authority to deal with the membership and it is the only Committee i.e. the General Committee that can deal with the membership. He would further impress me as to the reasons mentioned in the impugned communications dated 20.10.2022. He would submit that when institution membership is granted such membership would be perpetuity, i.e., till the concern which has been granted such institution membership is carrying on its business. He would further submit that it is not the case of the respondent that the institution seems not to exist. But, it is the claim of the respondent that such institution seems to be dissolved on the death of the proprietor. He would submit that the respondent has lost sight of the fact that such proprietorship concern can be continued by the legal heirs of such proprietor or even by a third party who has been transferred with such proprietorship rights in



9. Mr. Gautam S. Raman, learned counsel appearing for the respondent would submit that the respondent Committee had inspected the status of the applicant's institution membership in the club and that noticed that the institution status of N.G. George and Associates had been dissolved upon the death of the sole proprietor. This is evidenced by the applicant's own letter under a letterhead of different entity N.G. George and Associates Consultants Private Limited in respect of his nomination. Therefore, it could be presumed that the original institution which had been granted with membership is no more active and therefore the annulment of termination of membership is well within the ambit of the respondent.



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10.He had also vehemently contended that there can be no perpetual concession as that was not the concept that was envisaged when the club had introduced the category of institution membership. He would further submit that continuance of the institution and also the acceptance of the nomination of the applicant and his mother earlier and their continued usage of membership for 45 years after the death of N.G.George Senior cannot be a ground to continue the membership. There have been errors and omissions that had been committed by the previous committees.

11.He would further submit that the Resolution of the General Committee dated 20.01.2020 was only with regard to the suspension of membership and the present proceedings deal with annulment and termination of the membership and therefore earlier Resolution cannot stand as a bar for the present action of the club. This action against the applicant and its firm had been taken only after thoroughly verifying the records of the club as well as the documents submitted by the



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applicant. He had also produced a copy of the company master data wherein the company by name N.G.George and Associates (Consultants Private Limited) has been shown to be struck off from the Registrar of Companies. He would submit that the nomination of the applicant had been made under the letter head of the aforesaid company and therefore, the nomination is invalid nomination and that the institution member has also been replaced pursuant to the letter of the said company.

12.I have considered the rival submissions made by the learned counsel appearing for the respective parties and perused the materials available on record.

13.Various averments and allegations have been made against each other as to the right of an institution to continue to be an institution member of the respondent club. It is an admitted fact that in the year 1978 N.G.George and Associates a proprietorship concern had been offered an institution membership



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which had been accepted by it and has been assigned with a membership No.IMG 002. The institution had nominated late N.G.George Senior to be a member of the club after his death, his wife Mrs.Valsa George, the wife of Mr.N.G.George Senior had nominated on its behalf to be a member of the respondent club.

14.During the year 2001, considering her health, Valsa George offered to renounce her nomination and therefore, the applicant had been nominated as a nominee for the institution to be a member of the respondent club. Originally, an order of suspension was passed in the year 2019 which after due deliberations by the General Committee, had decided to revoke the suspension after verifying various records submitted by the applicant. By letter dated 23.08.2022, the club called upon the applicant to attend a meeting with the Secretary based upon the review made by their legal team as regards to the institution membership in the name of N.G.George and Associates. This letter has been replied to by the applicant and the Secretary by his reply letter dated 12.09.2022 had called upon the



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applicant to appear before the Executive Committee along with the supporting documents for deciding various issues which are extracted hereunder:

I. Whether in view of Rule IA(15) and Rule VII-B, the proprietorship of N.G.George and Associates would be an institution within the meaning of the Madras Gymkhana Club Rules?

II. Whether upon the demise of the proprietor of N.G.George and Associates could the institution have remained a member?

III. Whether your Nomination by the institution is valid in view of the status of N.G.George and Associates as a proprietorship and is free from defects as mentioned in para No.3?

IV. Whether N.G.George and Associates had transferred its institution membership to N.G.George and Associates (Consultants) Pvt.ltd? If yes, then what is the present status of the Company?

V. Whether the Institution and its nominee are eligible to continue as members of the club?



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15. Thereafter, the order of annulment and termination of institution membership had been passed. The first contention raised by the learned counsel Mr. George Cheriyan is that the Executive Committee of a club cannot have any authority to remove or take action for removal of a member. Apart from his contention, that even the Executive Committee did not hear the applicant as per the notice dated 12.09.2022. At this juncture, it would be relevant to analyse certain Rules of byelaws of the respondent.

Rule I A

(vii) Definitions:

8. 'Member' means a person who has been admitted to the Membership of the Club, under any of the categories, after the due process under the rules of the club has been completed.

...

11. 'Committee' means the General Committee, entrusted with the responsibility for the day-to-day management of all the affairs of the Club.

12. 'Executive Committee' means such committee members as are constituted under the rules of the club.

Rule I B



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(a) The Management of the Club shall be vested in a Committee called the General Committee consisting of a President, two Vice-Presidents, one of whom shall be from the Defence Services to be nominated by the General Officer Commanding, Honorary Secretary, Honorary Treasurer, nine other members, who, save as aforesaid, shall be Resident Members of not less than five years standing to be elected at an Annual General Meeting and such number of members as may be co-opted under clause (b)

...

j) (i).Executive Committee: It shall be the duty of the Executive Committee to regulate all charges other than entrance fees and monthly subscriptions and to be responsible for the General superintendence over all the business of the Club and all branches of its management subject to the approval and confirmation of the General Committee.

...

(vi) Honorary Secretary: The Honorary Secretary shall be a Statutory officer who is obliged by his positional Secretary to carry out the Statutory obligations of the club. He shall in particular exercise, in accordance with the directions of the Committee, General supervision over the activities of the club and will be responsible for the safe custody of the club's properties along with the Honorary Treasurer. He will be in charge of the Correspondence of the Club, and issue notices for the meetings of the Committee, as well as the General Body, in consultation with the President, prepare Agenda for the same and be responsible for the prompt issue of minutes of the Executive Committee, General Committee, and of the Extraordinary General Meeting and Annual General Meeting. He will be in charge of all the records of the Club, and shall maintain them in such manner to ensure continuity and easy reference by the Committee or any person authorised by it, or by any authority having the necessary



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jurisdiction to inspect the records. He will be the authority to initiate action with the approval of the Committee, for appointment of employees, finalise disciplinary action against employees and all other administrative matters. The Honorary Secretary with the approval of the Committee will prepare an Annual Report on the Working of the Club which shall be presented at the Annual General Body Meeting.

Rule XII

Conduct Prejudicial to the Club

*In the event of the conduct of any member or members either in or out of the Club, being injurious to the prestige of the Club, or in the event of any circumstances occurring, not specially provided for, and likely to disturb the order and harmony of the Club or in case of any infraction of the Rules of the Club or Bye-Laws of the Committee, the Committee may suspend such member or members for a period not exceeding three months, and if it be considered by the committee advisable that the circumstances should be submitted for the consideration of the members of the Club, a Special General meeting shall also be convened within the period for suspension. At such meeting the circumstances shall be discussed and a vote of the members entitled to vote and **present shall be taken by ballot upon the question as to whether the member whose conduct is under discussion shall continue to belong to the Club, and if a two to one majority of the members voting decide that the offender has merited expulsion, he shall cease to be a member of the club and notification thereof shall be sent to him by the Honorary Secretary. Any subscription which may have been paid by him in advance being returned, but such member shall remain liable for all debts to the Club incurred upto the time of his expulsion. The member concerned shall be given an opportunity to explain his case to the General Body, if he desires to do so.***

Rule XIX



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Termination of Membership

(a) Membership of the Club may be terminated by voluntary resignation from a prospective date by letter to the Honorary Secretary by failure to pay dues as provided in Rule XI or by expulsion as provided in Rule XII.

(b) A member's connection with the Club shall be terminated by the declaration of war between the State of which he is a subject and the Republic of India. Subjects of such State shall not be eligible for election until this Rule has been rescinded by a two to one majority of members present at the Annual general Meeting of the Club.

16.A reading of the aforesaid Clauses, the power to suspend or expel a member vested with the committee of the club. The committee had been defined under Clause 11 of Rule (1) (A) VII. The committee means the General Committee entrusted with the responsibilities for day to day management of the affairs of the club. Clause (1)(b)(a) the management of the club had been vested in a committee called the General Committee which consisted of various members. The Executive Committee has been vested with power to regulate & the General Superintendence,



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over all business of the club and its management which is also subject to approval and confirmation of the General Committee.

17.From the facts adduced based upon the arguments of the respective counsel, it could be ascertained that the applicant had been initially proceeded upon by the General Committee under Clause 12 by inflicting an order of suspension which after satisfactorily reply had been revoked. Thereafter, a communication had been issued by the Secretary on 23.08.2022, a counter filed by the respondent does not explain the authority under which such a notice had been given. But, however, by further communication, the applicant had been called upon to attend an enquiry by the Executive Committee by the Secretary of the respondent. These two communications are in clear contravention of Rules 1B(j)(i), 1(B)(j)(vi), 12 and 19. As already I have found that the power to expel vested with the General Committee neither the Honorary Secretary of the club nor



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the Executive Committee has no authority whatsoever to impinge upon the right of membership.

18. On this finding alone, I am of the prima facie view that the impugned communications is being passed without any authority whatsoever. The other grounds raised by the respective counsels as regards to the grant of institution membership and continuation of institution membership and whether the institution membership granted to N.G. George and Associates had been replaced to N.G. George and Associates (Consultants Private Limited) are all subject to the trial and evidence that has to be let in by the respective parties and I therefore refrain myself from traversing into various arguments made by the respective parties.

19. In view of my prima facie finding, there shall be an order of interim injunction as prayed for.



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20. In fine, the Application No.5928 of 2022 is dismissed and the Original Application No.813 of 2022 and the Application No.5927 of 2022 are allowed.

05.06.2023

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Pre-delivery common order in
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