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A.No. 2247 of 2024

And

C.S.No. 154 of 2022

C.V.KARTHIKEYAN, J.

This application has been filed by the second defendant in the suit seeking a direction that 21 days notice should be given by the Judge Commissioner for the elections of the first defendant Society, Madras Medical Mission for the years 2021-2024 and 2022-2025 instead of the 8 days given by the Judge Commissioner.

2. The background facts under which the suits have been instituted are long and winding. In effect, the members of the first defendant society, Madras Medical Mission have an affinity to create controversy and not to come to terms with each other.

3. The suits had been filed seeking to declare notices dated 15.07.2022, 25.07.2022 and 01.08.2022 issued by this applicant calling for nomination for contesting the elections for various posts of the first defendant for the years 2021-2024 and 2022-2025 in the governing body and to declare the results of the elections as illegal, null and void and for further consequential mandatory injunction reliefs.



4. The applications were argued at length and finally by a long and winding order passed incidentally by me, while earlier sitting on the Original Side on 02.12.2022, the notices were set aside and Hon'ble Mr. Justice V.Bharathidasan, former Judge was appointed as Judge Commissioner to conduct the elections for the aforementioned two separate terms. The orders were put to test before the Division Bench and for reasons which this Court need not at this stage explore, the Original Side Appeals were dismissed. Thereafter, the learned Judge Commissioner had the responsibility to issue an election schedule. He had so issued such an election schedule. The applicant herein has now found fault with that particular schedule and has come up filing these applications.

5. The plaintiffs in the suit have not filed their counter but arguments had been advanced by Mr.Vijay Narayan, learned Senior Counsel for the plaintiffs Mr.Davidson Devashish argued on behalf of the applicant. The election schedule which is now questioned by the applicant/second defendant in the suit is as follows:-



“ELECTION SCHEDULE

<i>S.No.</i>	<i>Dates</i>	<i>Schedule</i>
1.	05.04.2024	Publication of Election Notification
2.	08.04.2024 to 15.04.2024 (Excluding 14.04.2024)	Filing of Nomination between 11.00 a.m. and 4.00 p.m.
3.	16.04.2024	Scrutiny of Nomination at 11.00 a.m. and publication of contesting candidates list at 4.00 p.m.
4.	17.04.2024 & 18.04.2024	Withdrawal of Nomination between 11.00 a.m., and 4.00 p.m.
5.	18.04.2024	Publication of final list of candidates at 5.00 p.m.
6.	11.05.2024	Election, if any, will be held from 10.00 a.m., and 5.00 p.m.
7.	13.05.2024	Counting of votes and declaration of results

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6. The applicant had pointed out the fact that the publication of election notification was on 05.04.2024 and filing of nomination was from 08.04.2024 till 15.04.2024 excluding 14.04.2024. Pointing out these two dates, the learned counsel assails the election schedule on the ground that 21 days was not given to those who wanted to file their nomination. It is contended that this was the contention raised even in the suit on the earlier occasion and that this Court had struck down the notices which were complained of in the suit and had directed fresh notice to be issued. It is urged by the learned counsel that once again those, who wish to file nominations were not afforded 21 clear days to file such nomination from the date of publication of election notification.



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7. Learned Senior Counsel Mr.Vijay Narayan appearing on behalf of the plaintiffs however pointed out two facts. He first pointed out that this applicant had actually been suspended from membership and has no right to contest the elections and therefore, he questions the very locus of the applicant to maintain this application.

8. In this connection, my attention had been drawn to an order of the learned Judge Commissioner which was according to them communicated by e-mail on 04.04.2024. The learned Judge Commissioner necessary authority to give his opinion since a learned Single Judge of this Court had, during the interregnum period while exercising this particular issue had cast the die on the Judge Commissioner to take a decision on the issue of suspension and also state that any decision taken would be final. The learned Judge Commissioner in his order in paragraph No.9 had stated as follows:-

“9. In the instant case, the facts are totally different, pending the election process the General Body of the Society suspended the



applicant, when the same was brought to the notice of the Division Bench while disposing the original side appeals, at the request of the applicant, a liberty was granted to him to challenge the resolution in the manner known to law and there is no direction permitted him to participate in the election. Admittedly, so far the suspension was not challenged by the applicant before the Court of law. Now, it is also stated that a Forensic Audit is pending against the applicant. Considering those circumstances, unless the order of suspension is stayed or any positive directions issued by the Hon'ble Court permitting the applicant to participate in elections, the Judge Commissioner is not in a position to permit the applicant to participate in the election. Hence, the application is rejected."

9. Even today, it is not informed by the applicant whether he had challenged the suspension in manner known to law before any Court of law. Therefore, the opinion of the learned Judge Commissioner that he was not prepared to permit the applicant to participate in the election is of much significance while examining the status of the petitioner to maintain this application. He cannot participate in the elections. He cannot also therefore speak for others. No other member had raised this particular



issue. As a matter of fact I am informed that for the 14 posts in the Governing Council, 18 nominations have been received.

10. It is on that basis since the election will have to be now conducted to choose 14 out of 18 nomination, the learned senior counsel placed reliance on Bye-Laws No.44 of the first defendant Society. Bye-Law No. 44 is as follows:-

“44. In case of more nominations than the required number, election should be held giving 21 days clear notice of such election to the members of the Society. Such election shall be by secret ballot, by members present and voting and not by proxy.”

11. This particular clause is interpreted by the learned Senior Counsel that after the nominations are received and if more number of nominations than the posts for which elections are scheduled are received, then 21 days' notice should be given for the conduct of elections.



12. My attention is then drawn to the actual election schedule which had been extracted *supra* wherein the publication of final list of candidates was on 18.04.2024 and it had been scheduled that the election should be conducted on 11.05.2024 which gives 24 clear days of notice between the final list of candidates and the actual date of elections. This is what is intended in Clause 44 of the Bye-Laws of the Society wherein it had been stipulated that if elections are to be conducted then 21 clear days notice is to be given. The interpretation that 21 days should be given for members to file their nomination unfortunately is not found in the Bye-Laws.

13. It is thus clear that the intention of the petitioner is only to postpone the elections in some manner or the other. I only hope that some sense and sensibility will prevail upon the members to participate in the elections called for by the Judge Commissioner and ensure that the society functions with a body of elected members which would only for the betterment of the society. This affinity to point out every minor issue on every turn of event should stop for some time. This Application stands dismissed.



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14. Incidentally it must also be mentioned that the applicant had also filed Application No.2245 of 2024 in a parallel suit in C.S.No. 153 of 2022 wherein also orders have been passed today dismissing the said application on the same reasons.

15. The Judge Commissioner may proceed further with the election notification and file a report after conducting the elections.

Vsg

22.04.2024

(2/2)

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