



WEB COPY

1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.03.2024

Pronounced on : 18.03.2024

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

O.A.Nos.787 to 789 of 2023
in C.S.No.181 of 2023

Thiru.Edappadi K.Palaniswami
General Secretary
All India Anna Dravida Munnetra Kazhagam
No.226, Avvai Shanmugam Salai
Royapettah, Chennai – 600 014

.. Applicant in all O.As.

Versus

Mr.O.Panneerselvam
No.154, SALMA's Green Castle Apartment
P.S.Kumaraswami Raja Salai
Chennai – 600 028

.. Respondent in all O.As.

Prayer in O.A.No.787 of 2023: Original Application filed under XIV Rule 8 of O.S.Rules read with Order 39 Rule 1 and 2 of Code of Civil Procedure, praying for issuance of interim injunction restraining the respondent/defendant, his men and any other person claiming under him from interfering with the functioning of the plaintiff as the General Secretary of the All India Anna Dravida Munnetra Kazhagam (AIADMK) Party pending disposal of this suit.



Prayer in O.A.No.788 of 2023: Original Application filed under XIV Rule 8 of O.S.Rules read with Order 39 Rule 1 and 2 of Code of Civil Procedure, praying for issuance of interim injunction restraining the respondent/defendant, his men and any other person claiming under him from holding out as the Coordinator or as a primary member of the All India Anna Dravida Munnetra Kazhagam (AIADMK) Party pending disposal of this suit.

Prayer in O.A.No.789 of 2023: Original Application filed under XIV Rule 8 of O.S.Rules read with Order 39 Rule 1 and 2 of Code of Civil Procedure, praying for issuance of interim injunction restraining the respondent/defendant, his men and any other person claiming under him from using the official letter head reserved symbol two-leaves and the official flag of the All India Anna Dravida Munnetra Kazhagam (AIADMK) party pending disposal of this suit.

For Applicant : Mr.Vijay Narayan, Senior Counsel
for Mr.Gowthamkumar

For Respondent : Mr.P.H.Aravindh Pandian, Senior Counsel
in O.A.Nos.787 & 788 of 2023
for Mrs.P.Rajalakshmi

Mr.Abdul Saleem, Senior Counsel
in O.A.No.789 of 2023
for Mrs.P.Rajalakshmi

COMMON ORDER

Original Application in O.A.No.787 of 2023 has been filed seeking to pass an order of interim injunction restraining the respondent/defendant, his men and any other person claiming under him from interfering with the



functioning of the plaintiff as the General Secretary of the All India Anna Dravida Munnetra Kazhagam (AIADMK) Party pending disposal of this suit;

Original Application in O.A.No.788 of 2023 has been filed seeking to pass an order of interim injunction restraining the respondent/defendant, his men and any other person claiming under him from holding out or claiming as the Coordinator or as a primary member of the All India Dravida Munnetra Kazhagam (AIADMK) Party pending disposal of this suit; and

Original application in O.A.No.789 of 2023 has been filed seeking to pass an order of interim injunction restraining the respondent/defendant, his men and any other person claiming under him from using the official letter head reserved symbol two-leaves and the official flag of the All India Anna Dravida Munnetra Kazhagam (AIADMK) party pending disposal of this suit.

2. The suit in C.S.No.181 of 2023 has been filed praying to pass a judgment and decree of permanent injunction restraining the defendant, his men and any other person claiming under him from interfering with the functioning of the Plaintiff as the General Secretary of All India Anna



Dravida Munnetra Kazhagam (AIADMK) Party.

WEB COPY

3. Though all these three applications have been filed for different relief, the facts leading to the filing of all these applications are one and the same, this court is inclined to dispose of the same by way of this common order.

4. For the sake of convenience, the parties in these applications will be referred to as per their array in the suit.

5. The facts leading to the filing of these applications, in brief, are as under:-

(i) The plaintiff is the General Secretary of 'All India Anna Dravida Munnetra Kazhagam' (for short 'AIADMK party'. He is also the Former Chief Minister of State of Tamil Nadu.

(ii) The respondent herein was previously a member and an office bearer of the AIADMK party. He was expelled from the primary membership on 11.07.2022 by the General Council of the party for several anti-party activities including ransacking of the party headquarters situated at



Royapettah in Chennai.

WEB COPY (iii) AIADMK party was originally founded by Dr.M.G.Ramachandran.

It is a recognized political party in the State of Tamil Nadu and Union Territory of Puducherry registered with the Election Commission of India. After the demise of Dr.M.G.Ramachandran, the party was led by its then General Secretary Dr.J.Jayalalithaa. She passed away on 05.12.2016. Pursuant to her demise, there was a split in the party. Thereafter, the plaintiff and the defendant moved the Election Commission of India and the Election Commission of India, by order dated 23.11.2017, held that the group that was jointly led by the plaintiff and the defendant was the original AIADMK. The decision of the Election Commission of India was confirmed by the Delhi High Court by its order dated 28.02.2019 and by the Hon'ble Supreme Court by its order dated 26.03.2019. The review petition filed against the said order was also dismissed by the Hon'ble Supreme Court on 20.04.2020.

(iv) Thereafter, during the pendency of the proceedings before the Election Commission of India, two factions as it stood then, one led by the plaintiff and the other by the defendant, came together and jointly issued a notice dated 28.08.2017 for convening the General Council Meeting on



12.09.2017 wherein the following resolutions were passed unanimously:-

WEB COPY

(a) Recission of appointment of the Interim General Secretary and all appointments made by the Interim General Secretary.

(b) Appointment of the defendant and the plaintiff as Coordinator and Joint Coordinator respectively.

(c) Abolition of post of General Secretary by naming Dr.J.Jayalalithaa as the Eternal General Secretary.

(d) Amendments to the Rules and Regulations to incorporate the necessary changes.

(v) Pursuant to the above resolutions, the plaintiff and the defendant continued to function as the Coordinator and Joint Coordinator of the party from 2017 till 2021. The plaintiff and the defendant nominated Dr.A.Tamil Magan Hussain as the Interim Presidium Chairman on 01.12.2021 and on the very same day i.e., on 01.12.2021, the Executive Committee passed special resolutions and introduced certain other amendments to the Rules and



Regulations of the AIADMK party including (a) that the Coordinator and Joint Coordinator shall be elected by the primary members instead of the General Council and (b) they shall be elected jointly by a single vote i.e., they would contest under a single ticket. Further the Executive Council also resolved that the amendments made at the said meeting shall be placed at the next convening General Council for approval, since it was the General Council alone that had the power to amend the bye-laws as per Rule 43 of the Rules and Regulations.

(vi) Thereafter, based on the above unapproved amended bye-laws, an election to the posts of Coordinator and Joint Coordinator was also announced and the defendant and the plaintiff were chosen unopposed as the Coordinator and Joint Coordinator. Thereafter, a General Council meeting of the party was called for on 23.06.2022. In the said meeting the functionaries of the party and the District Secretaries echoed the voice of the cadre which was that the party cadre wanted single leadership and were not happy with the dual leadership that was in existence. As the cadre was not in favour of dual leadership and the respondent had no support amongst the cadre, the respondent had started creating one issue after the other which ultimately led



him to file a suit through his one of the supporters one Mr.M.Shanmugam in C.S.No.111 of 2022 before this court seeking stay of the meeting that was scheduled to be held on 23.06.2022. A learned single Judge of this court refused to grant stay of the meeting. However, on appeal by the defendant's supporter in O.S.A.No.160 of 2022 and C.M.P.No.9962 of 2022, a Division Bench of this court by order dated 23.06.2022 directed the meeting (scheduled to be held on 23.06.2022) could proceed but no decisions should be taken at the said meeting excepting on 23 resolutions which had been supposedly approved by the defendant. The Division Bench held that there could be no discussion on any issues. Pursuant to the orders of the Division Bench of this Court, in the meeting held on 23.06.2022, the Presidium Chairman on the floor of the General Council announced the next General Council meeting would be convened on 11.07.2022. The defendant, who was present at the said meeting after the announcement was made by the Presidium Chairman, left the meeting raising several slogans along with three of his supporters and accusing the members of the General Council. Pursuant to the announcement of the General Council, invitation was sent out to the members on 01.07.2022 detailing the agenda items that were to be discussed on 11.07.2022 by the office bearers of the party.



WEB COPY (vii) Challenging the said meeting, the defendant filed a suit in C.S.No.118 of 2022 before this court while another member of the General Council who is a supporter of the defendant filed a suit in C.S.No.119 of 2022. In the mean time, when the appeal filed by the plaintiff in S.L.P. (C) No.11237 of 2022 against the order of the Division Bench of this court dated 23.06.2022 in O.S.A.No.160 of 2022 and C.M.P.No.9962 of 2022 came up for hearing on 06.07.2022, the Hon'ble Supreme Court stayed the operation of the order of the Division Bench of this Court and permitted the meeting scheduled on 11.07.2022 to be proceeded with in accordance with law. The Hon'ble Supreme Court further permitted any other interim reliefs to be canvassed before the single Judge on the original side.

(viii) While so, applicants moved the new suit for injunction of the meeting on 11.07.2022 which was heard on 07.07.2022 and 08.07.2022 and orders were reserved by the learned single Judge. The learned single dismissed the applications by order dated 11.07.2022 and permitted the meeting to proceed. Accordingly the meeting was convened on 11.07.2022.



WEB COPY (ix) On the date when the orders of the learned single Judge was to be pronounced (i.e. On 11.07.2022), the respondent with his supporters ransacked the party headquarters office which resulted in filing of criminal case and the orders passed under Sections 145 and 147 of Cr.P.C. were challenged in Crl.O.P.Nos.16343, 16485 and 16695 of 2022. This court by order dated 20.07.2022 quashed the orders passed by the revenue authorities and directed the possession of the building to be handed over to the plaintiff.

(x) That on 11.07.2022 in the General Council Meeting, the General Council restored the position of the General Secretary, by abolishing the posts of 'Coordinator' and 'Joint Coordinator'. Amendments included abolition of the post of Deputy Coordinators as well as creating the posts of Deputy Secretaries and abolition of the Advisory Committee. The General Council elected the plaintiff as Interim General Secretary of the party and it was also resolved in the General Council to conduct election to the post of General Secretary within four months and appointed officers for the same. In the said General Council meeting, the General Council removed the respondent and his supporters from all the posts and primary membership of



the party. The election was also intimated with regard to the amendments.

WEB COPY

(xi) Meanwhile, the Hon'ble Supreme Court, by order dated 29.07.2022 made in S.L.P.(C) Nos.12784-12785 of 2022, remanded the matter in O.A.Nos.370 and 379 of 2022 in C.S.No.119 of 2022 to this court for reconsideration. Thereafter, the matter was heard fresh and the learned single Judge of this court by order dated 17.08.2022 allowed the application filed by the defendant and the other plaintiff in C.S.No.119 of 2022 and restored status quo ante as on 23.06.2022. On appeal preferred by the plaintiff in O.S.A.Nos.227, 231 & 232 of 2022, a Division Bench of this Court, by order dated 02.09.2022, set aside the orders of the learned single Judge and dismissed the interim applications. The defendant and his supporter preferred SLP.C.Nos.15705-15706 of 2022 before the Hon'ble Supreme Court challenging the order passed by the Division Bench dated 02.09.2022 and the the Hon'ble Supreme Court by order dated 30.09.2022, directed the appeals to be listed along with the appeals already filed by the plaintiff herein against the orders of the Division Bench dated 23.06.2022. The Hon'ble Supreme Court disposed of the appeals by order dated 23.02.2023. The order of the Division Bench dated 02.09.2022 setting aside the order dated 17.08.2022 was affirmed and consequently the interim



applications stood rejected.

WEB COPY

(xii) Thereafter, on 03.03.2023, Mr.P.H.Manoj Pandian, one of the supporters of the defendant moved with a civil suit in C.S.No.47 of 2023 and O.A.No.164 of 2023 before this court seeking interim injunction against the implementation of the resolutions passed on 11.07.2023 . This court by order dated 03.03.2023, refused to grant any ex parte ad interim injunction for the reason that the resolutions were passed eight months ago and as such there was no urgency whatsoever. While so, two of the other supporters viz., Mr.J.C.D. Prabakar and Mr.R.Vaithialingam moved civil suits in C.S.No.55 and 56 of 2023 on 17.03.2023, however, no interim orders were passed on the said suits.

(xiii) Thereafter, election for the post of General Secretary was announced and immediately thereafter, on 18.03.2023 (Saturday), the defendant filed a civil suit in C.S.No.62 of 2023 and sought for an urgent hearing on 19.03.2023. All the interim applications filed along with the suits either by the defendant or his supporters were heard on 25.08.2023 during a special sitting and the same came to be dismissed on 28.03.2023. Appeals preferred in O.S.A.Nos.68 to 78 of 2023 as against the order of the learned



single Judge dated 28.08.2023 were dismissed by a Division Bench of this Court by order dated 25.08.2023 and the Division Bench refused to interfere with the orders of the learned single Judge dated 28.03.2023.

(xiv) Thereafter, despite the order expelling the defendant from the primary membership and from the post of Coordinator, on various dates such as 14.07.2022, 15.07.2022, 24.07.2022, 25.07.2022, 26.07.022, 27.09.2022, 29.09.2022, 06.10.2022, 11.10.2022, 19.10.2022, 25.10.2022, 26.10.2022, etc., the defendant went on to make various illegal appointments and expulsions by misusing the official letter head of the party. The defendant continued to claim to be the Coordinator of the party and continued to use the official letterhead of the party and the address of the headquarters along with the name of the party and hence, according to the plaintiff, when the defendant had already been expelled from the primary membership of the party and the post of Coordinator, he has no right to continue to claim to be the coordinator of the AIADMK Party and to use the letter head and flag of the party, particularly, when he had challenged the resolution passed by the General Council and no orders were granted in his favour and all his applications were dismissed. Hence, according to the plaintiff, he is entitled



for interim injunction as prayed for in the applications.

WEB COPY

6. It is the contention of the defendant that after the demise of Dr.M.G.Ramachandran, the then Chief Minister Dr.J.Jayalalithaa became the General Secretary of the Party. Even during her lifetime whenever she was unseated on account of legal impediments, the defendant had sworn as the Chief Minister more than twice. The defendant had held various posts after becoming the member in the party from 1977 and finally become the Co-ordinator of the party in the year 2021. He has also moved the Election Commission after the death of the then General Secretary to obtain “Two Leaves” symbol of the Party. On 12.09.2017, several resolutions were passed and amendments were made to the Bye-laws of the Party. It was decided that Dr.J.Jayalalithaa would be made as eternal General Secretary of the Party and that thereafter the post of General Secretary would be abolished. Two high level posts of Coordinator and Joint Coordinator were created and the defendant was elected as Co-ordinator and the plaintiff was elected as Joint Co-ordinator by the General Council. As per the amended byelaws, the tenure of Coordinator and Joint Coordinator is to be for a period of 5 years. The Election Commission finally decided the dispute and allotted “Two Leaves” symbol to the AIADMK. From September 2017 to May 2021, the AIADMK



Party remained in government/power in Tamil Nadu under the joint leadership of the defendant as Deputy Chief Minister and the plaintiff as the Chief Minister.

7. Even during the Legislative Assembly Election in the year 2021 under the joint leadership, the Party emerged as the opposition party and affairs of the Party was conducted as per the resolution given powers to the plaintiff and the respondent. The plaintiff and the respondent jointly called for a regular meeting of the General Council of the Party for 23.06.2022. The said notice did not specify any agenda for discussion. However, shortly after the call for the meeting, the plaintiff had started engaging in machinations and maneuvers to wrest control of the AIADMK Party. This led to serious concerns amongst the party cadre who were upset and angry that their recent mandate for continued joint leadership was to be surreptitiously overruled by undemocratic resolutions that might have been proposed and adopted on the floor of the General Council meeting scheduled for 23.06.2022. Admitting that Civil Suit in C.S.No.111 of 2022 filed by one Shanmugam seeking interim injunction in relation to the meeting scheduled on 23.06.2022 and various other reliefs in this regard. It is the contention of the respondent that



interim orders reached upto the Hon'ble Apex Court and the Hon'ble Supreme Court has not decided the validity of the amendments or the resolutions.

While disposing the appeal, the Hon'ble Apex Court has clarified it is not expressing any opinion on the validity of the resolution passed at the meeting of the General Council held on 11.07.2022. It also concluded that none of the observation in the judgment will have bearing on the merit considerations of the pending civil suits. Further, it is stated even the Division Bench of this Court in an interim order dated 28.03.2023 has held that on the question of expulsion of the appellants from the party, once again the issue will have to be decided on the basis of the powers of the General Council and the relevant Bye-laws in the this regard. This is an issue that must be necessarily tried in the suits and it is for the parties to make out their respective cases.

8. As the Appellate Courts have held that any observation and findings are not binding, the plaintiff cannot rely upon that. It is the further contention that he has not committed any illegality. It is also denied that he is misusing the official letter heads and misleading the public. According to the respondent, the post of the Co-ordinator and Joint Co-ordinator is not lapsed and the issue considering the same is subject matter of the pending suits. The



Election Commission has also uploaded amended Bye-laws and list of office-bearers in the official websites. The election commission has uploaded two version of the Bye-laws. Hence, oppose the application.

9. Mr.Vijaya Narayanan, learned Senior Counsel for the plaintiff would submit that:-

a. Once the defendant is removed from the primary membership of the party in the General Council Meeting, he cannot be permitted to use the symbol, letterpad and flag of the party. Though several litigations are filed as against the removal of the defendant from the primary membership in the General Council Meeting held on 11.07.2022, no Courts have passed any order as against the resolution. The defendant himself filed a suit and sought interim order and failed before the Courts, he cannot be permitted to use the party symbol, flag and letterpad, if it is allowed, the same will lead to the confusion among the cadres. Therefore, once the General Secretary is elected by the General Council Meeting, the removed member has no right unless the resolution expelling him from the Party is set aside by the competent Court. As on today, the resolution stands.



WEB COPY

b. The resolution based on the meeting dated 11.07.2022 was allowed by the Hon'ble Supreme Court itself. When the challenge was made to the validity of the said meeting, the validity of the meeting is upheld by the Division Bench and subsequent appeal is also dismissed by the Hon'ble Supreme Court. Hence, as long as there is no injunction against the resolution, the respondent has no right to call himself as a Co-ordinator of the AIADMK recognised political party. Merely because the Courts have held that observation made in the judgment will not have a bearing to decide the main suit that will not give license to the defendant to continue as a member of the political party when the resolution has not been disturbed.

c. When the party is using its own flag from the very inception, the long usage of flag, which, in fact, has acquired the proprietary rights of the political party. As per the Bye-law No.4, the official flag has been described. Injunction is also sought in respect of official flag.

d. Though the main relief is also for permanent injunction as like the present application, if the interim relief is not granted in these applications, it



would tantamount to the dismissal of the main suit itself. In such cases, considering the serious issue, this Court has to necessarily look into the interest of the party by granting interim injunction. Further, when the person is removed from primary membership in any association or party, unless such removal is set aside, he cannot continue as a member, use the flag or letter pad of the association of the Party. The same analogy is applicable to the defendant also. Hence, pray for grant of injunction.

e. In support of the submissions, he relied upon the judgments of this Court in the case of *K.Anbazhagan vs. M.Kannappan and 10 others* reported in 1997 (II) CTC 47 and the Hon'ble Supreme Court in the case of *Deoraj vs. State of Maharashtra and others* reported in (2004) 4 SCC 697.

10. Mr.P.H.Aravindh Pandian, learned learned Senior Counsel for the defendant would submit that:-

a. The suit itself is not maintainable as the cause of action alleged in the suit is premature. The suit is proceeded as if the final decision has been arrived in favour of the plaintiff. According to him, in all the matters, the Division Bench as well as the Hon'ble Apex Court has clearly held that



contention raised by the party shall be decided only in the trial and the same is a matter of evidence. Such being the position, when the validity of the removal or expulsion has not been decided finally, the plaintiff cannot seek an injunction against the defendant who was also a former Chief Minister of the same political party.

b. Only on the efforts of the defendant, the symbol was allotted to the party before the Election Commission and thereafter, Co-ordinator and Joint Co-ordinator have been appointed by the resolution. Therefore, when the Party had agreed on the basis of such resolution, now, it cannot be said that the said resolution is lapsed in view of the non approval in the General Council Meeting held on 23.06.2022. This contention is also negatived and same will be decided in the trial as directed by the Division Bench of this Court while disposing the appeal. Such view of the matter, merely, a person calls himself as a Co-ordinator, the same will not amount to the interference of the Party affairs.

c. There is no description of the flag in the entire plaint and further the registration of the flag is also not required. The election commission is not



made as a necessary party to the suit and the suit has to be necessarily dismissed as not maintainable for non joinder of the necessary party. Hence, the suit itself is premature. Therefore, the application is not maintainable.

d. There is no provision for registration of flag, symbol or slogan as it is not a property to get it reserved or registered or to have a monopoly over it. Therefore, one political party consequently cannot have any right or grievance about flag, its design, symbol, colour or slogan canvassed and made use by other political party.

e. In support of the submissions, he placed reliance in the judgment of Andhra Pradesh High Court in the case of *Ajeya Bharat Party vs. The Chief Election Commissioner* reported in 2009 AIHC NOC 697 and the Order of this Court in the case of *K.Anbazhagan vs. M.Kannappan and 10 others* reported in 1997 (II) CTC 47.

11. Mr.Abdul Saleem, learned Senior Counsel also made a submission that the plaintiff has filed the suit in his individual capacity. The political party has not filed the suit, there is no description of flag in the plaint,



whereas, the party is using three types of flags. Unless, there is a description, the injunction cannot be granted as against the defendant. It is also brought to the notice of this Court as per the Order 15 of The Election Symbols (Reservation and Allotment) Order, 1968, only the Election Commission is competent to decide with regard to the rival sections. The Election Commission of India in Dispute Case No.2 of 2017 decided that the Two Leaves symbol is allotted to the group led by Mr.E.Madhusudhanan, defendant and S.Semmalai. Therefore, the injunction cannot be granted.

12. In light of the above submissions, now the point arising for consideration are as follows:

- (i). Whether the plaintiff is entitled to interim injunction as prayed for?
- (ii). Whether the plaintiff has satisfied the existence of triple test for grant of interim injunction?

Issue Nos.(i) and (ii)

13. The suit has been originally filed for permanent injunction restraining the defendant from interfering with the functioning of the plaintiff



as the General Secretary of the AIADMK Party and claiming as the Coordinator of the Party and also using the official letter head, Two Leaves symbol and the official flag of the Party.

14. The suit proceeded mainly on the ground that the defendant was removed from primary membership of the Party and also the post of the Coordinator. Therefore, he is not entitled to use the Party's name as well as the letter pad and flag. The dispute relating to the removal by way of General Council Meeting has checkered history. The fact that the AIADMK was founded by Dr.M.G.Ramachandran, the then Chief Minister. Thereafter, the then General Secretary, Dr.J.Jayalalithaa led the party was not disputed by both sides. After the death of Dr.J.Jayalalithaa, it appears that there was a dispute within the Party. The plaintiff, defendant led group and other group led by V.K.Sasikala approached the Election Commission for allotting symbols in Dispute Case No.2 of 2017. The Election Commission vide Order dated 23.11.2017 allotted "Two Leaves" symbol to the group led by one E.Madhusudhanan, defendant and S.Semmalai and also the plaintiff. Thereafter, the plaintiff and defendant jointly issued a notice on 28.08.2017 for convening the General Council Meeting on 12.09.2017, wherein, certain



resolutions were passed unanimously, wherein, the defendant was appointed

as Coordinator and the plaintiff was appointed as Joint Coordinator.

Thereafter, the Executive Committee Meeting also resolved that the amendments made at the said meeting shall be placed at the next convening General Council for its approval. Then the meeting of the Party was called for on 23.06.2022.

15. In between, the differences of opinion arose between the plaintiff group and the defendant group. At this stage, the supporter of the defendant Mr.M.Shanmugam filed a civil suit in C.S.No.111/2022 seeking for stay of the meeting scheduled on 23.06.2022. However, the learned Judge refused to grant stay of the meeting and the same was challenged in O.S.A.No.160 of 2022, however, the Division Bench held that the meeting has to proceed, however, no decisions should be taken at the said meeting excepting on the 23 resolutions which had been approved by the defendant. The Division Bench also held that there can be discussion on any issues. On 23.06.2022, as per the majority members' wish, the General Council Meeting was called for on 11.07.2022. In the meantime, the appeal was filed as against the Order of the Division Bench of this Court in O.S.A.No.160 of 2022 came up before



the Hon'ble Supreme Court in SLP.No.11237 of 2022. The Hon'ble Supreme Court vide Order dated 06.07.2022 stayed the Order of the Division Bench in O.S.A.No.160 of 2022, however, held that meeting of the General Council slated to be held on 11.07.2022 is concerned, the same may proceed in accordance with law and in that relation, the other aspects of any interim relief ought to be projected and presented before the learned Single judge dealing with civil suit(s) on the Original Side.

16. Before the meeting, a new suit for injunction against the meeting scheduled to be held on 11.07.2022 was also filed. However, the learned single Judge has dismissed the application. Therefore, the meeting continued and the resolutions were passed removing the respondent from the primary membership, besides the posts of Co-ordinator and Joint Co-ordinator were abolished and the plaintiff was elected as Interim General Secretary. These facts are not in dispute.

17. On the date of resolution on 11.07.2022, there were proceedings initiated under Section 145 Cr.P.C. in respect of Party Headquarter Office. The Revenue Authorities sealed the building which was challenged in



Crl.O.P.Nos.16343 & 16695 of 2022. This Court, by Order dated 20.07.2022

quashed the Order of the Revenue Authorities and directed the possession of the building to be handed over to the Interim General Secretary namely the present plaintiff. Challenge was made before the Hon'ble Supreme Court against the Order of the Court dated 20.07.2022 and the same was also dismissed in S.L.P.(Criminal).Nos.7119-7121 of 2022 by Order dated 12.09.2022. In the meanwhile, the Hon'ble Apex Court in S.L.P.Nos.12784/12785 of 2022 has remanded the matter back to the learned Single Judge. Thereafter, the matter was heard afresh by the learned Single Judge in C.S.Nos.118 & 119 of 2022. The application in O.A.Nos.368, 370 & 379 of 2022 were disposed of vide Order dated 17.08.2022 and the learned Single Judge has directed that there shall be an order of *status quo ante* to be maintained as on 23.06.2022. As against which, appeals were preferred in O.S.A.Nos.227,231 & 232 of 2022 before the Division Bench, wherein, the Division Bench vide judgment dated 02.09.2022 set aside the order of the learned Single Judge restoring the *status quo ante*. While disposing the appeal, the Division Bench has held that the stand taken by the appellant/plaintiff herein that the posts of Co-ordinator and Joint Co-ordinator is lapsed for want of ratification on 23.06.2022 has to be decided in



the pending suit. The Division Bench has also held that the first respondent/defendant herein did not challenge the General Council Meeting held on 23.06.2022 and the Order of the *status quo ante* cannot be granted.

18. It is also an undisputed fact that the supporters of the defendant had filed suits in C.S.Nos.47, 55 and 56 of 2023 challenging the resolution passed on 11.07.2022, wherein, interim order was sought against the implementations of the resolutions passed on 11.07.2023. However, the Court has not granted any interim order. Thereafter, the election schedule for the elections to the post of General Secretary was announced by the Party. The defendant filed a suit in C.S.No.62 of 2023. The applications filed in Civil Suit Nos.47, 55, 56 and 62 of 2023 came to be dismissed on 28.03.2023. Thereafter, the plaintiff came to be declared as the General Secretary of the Party. Once again, the defendant filed O.S.A.Nos.68 to 78 of 2023 before the Division Bench against the Order of the Court 28.03.2023. The said appeals were also dismissed vide Judgment dated 25.08.2023. The Division Bench has held that question of expulsion of the defendant and supporters from the Party, the issue will have to be decided on the basis of the powers of the General Council and the relevant Bye-laws in this regard.



The issue must be necessarily tried in the suits and it is for the parties to make out their respective cases. Further, the relief of interim injunction as sought by the defendant and supporters were negatived. The appeals were filed as against the judgment in O.S.A.Nos.71, 72 and 75 of 2023 were taken up in S.L.P.Nos.141 to 143 of 2024 before the Hon'ble Supreme Court. The Hon'ble Apex Court did not interfere with the judgment of the Division Bench and dismissed the appeal by holding that the observation made in the judgment of the Division Bench including the order passed by the learned Single Judge and the dismissal of the present appeal will not be treated as an expression of opinion on the merits of the case. Thereafter, the present application is filed.

19. The above facts with regard to the various litigations are not disputed and it is the admitted case of both sides. Now, the present suit has been filed mainly on the ground that despite challenge made to the resolution, no interim orders are passed and the Court has not disturbed the resolution, still the defendant is using the party flag. Whereas, in the counter, the defendant had made an assertion that the posts of the Coordinator and Joint Coordinator are not lapsed since the issue concerning is the subject matter of



a pending suit. Further, it is asserted that there is no provision for registration of the flag and as such the flag is not a property of the plaintiff to claim monopoly. Further, if the defendant is restrained from using the flag and properties, it would cause great prejudice and irreparable injury to the defendant and the lakhs of cadres in the Party.

20. The very counter itself makes it clear that the defendant still wants to use the Party flag and the properties. It is relevant to note that in a General Council Meeting which is the supreme body of the organisation in a political party has took a decision expelling the defendant from the primary membership of the Party. Besides, the challenge made by way of suits before the Court, interim relief were sought against the resolution as well as the expulsion has not fructified any results even upto the Hon'ble Supreme Court. While rejecting the applications, this Court never held that the resolution is not binding on the parties and not enforceable. What was left open by the Division Bench and the Hon'ble Apex Court is that the main issue between the parties whether the posts of the Joint Coordinator and Coordinator are lapsed or not are to be decided only in the trial. As long as the resolution validly passed in the General Council Meeting held on 11.07.2022 is not



disturbed, particularly, when the meeting was permitted by the Hon'ble Apex Court, the defendant cannot contend that still he is a member of the Party and can use the Party flag, letterpad and symbols etc., When the decision is taken by the majority members in a resolution, unless such resolution found to be illegal or declared invalid by the competent Court, in the view of this Court, the resolution holds good.

21. Such view of the matter, when the defendant himself had made an attempt to stall the enforcement of the resolution and failed, now cannot contend that he is still continuing as the primary membership of the political party from which he was expelled by the majority members in the General Council Meeting. Be that as it may, it is the contention of the defendant that since there is no description with regard to the Party Flag in the suit, injunction cannot be granted. The injunction sought in the plaint is only in respect of flag recognised by Bye-law. Bye-law 4 deals with the description of the Flag. It is not disputed by the parties that the flag as per the Bye-law is the official flag of the AIADMK. Usage of the flag from the very inception of the Party is not in dispute. When the Party is in the use of flag for many years, one cannot contend that such long usage will not confer any right of



particular political party over the flag they have been using all these years.

WEB COPY

22. Though the registration of the flag is not required under the Election Symbols (Reservation and Allotment) Order, 1968, the fact remains that the very long usage, in fact, creates the proprietary right over the flag for the particular party. In this regard, it is useful to refer to the judgment of this Court in K.Anbazhagan vs. M.Kannappan and 10 others reported in 1997 (II) CTC 47. The relevant portion of the order is extracted hereunder:

“19. Clause 15 of the Symbols Order reads as follows:-

"When the Commission is satisfied on information in its possession that there are rival sections or groups of a recognised political party each of whom claims to be that party, the Commission may, after taking into account all the available facts and circumstances of the case and hearing such representatives of the Sections or groups and other persons as desire to be heard, decide that one such rival section or group or none of such rival sections or groups is that recognised political party and the decision of the Commission shall be binding on all such rival Sections of Groups."

From this we can infer that Clause 15 of the Symbols Order (1968) can be applied only if there is rival group or splinter group and there is a dispute between them and the parent group, the said clause does not say anything about the expelled group. The applicant's case is that the defendants are no longer



WEB COPY



members of the DMK party and the documentary evidence produced by them support it. There is no contra evidence on behalf of the defendants that they continue to be the members of the DMK even after the expulsion from the party. Therefore the dispute between the plaintiff and the defendants cannot be said to be a dispute which has to be decided in accordance with Clause 15 of the symbols Order by the Election Commission ousting the jurisdiction of this court.

20. The defendants would also contend that there is no proprietary right involved in the present case to grant injunction. Learned counsel appearing for the plaintiff would point out that meaning of the word 'Flag' as found in the Law Lexicon is 'a piece of cloth or bunting, usually with a pattern or a device, generally oblong or square in shape, attached to a pole or staff and used to denote nationality, party or ownership.' Regulation 1 of the party refers to the name and Regulation 4 refers to the flag as belonging to them. The term 'property' has been defined in the Law Lexicon, as something which a person can exclusively possess and own. Learned counsel appearing for the plaintiff has recollected the dispute with regard to the removal of and alteration of namam as the subject matter of a Civil suit and would argue that any object which can be owned by a person has to be considered as a property and if we consider the name of the party and the flag of the party as owned by the plaintiff, it cannot be stated that there is no proprietary right for the plaintiff, in them. As per Rule 1 of the Rules and Regulations, the name of the party shall be DMK and as per Rule 4, the party shall have a flag of black and red colours, black at the top and red beneath it of the size 3:2 indicating that the owner of the name and flag is the party. The name and flag are therefore the properties of the party. The lawfully elected President and General Secretary of the party are Thiru M. Karunanidhi and Thiru K. Anbalagan respectively. Section 38(3) of the Specific Relief Act provides that "When the defendant invades or threatens to invade the plaintiff's right to or enjoyment of a property, the court may grant a perpetual



WEB COPY

injunction, where the invasion is such that compensation in money would not afford adequate relief, among other things." The definition of the words name and flag and the provision of Section 38(3) of the Specific Relief Act when considered together, the contention of the defendants that there is no proprietary right for the plaintiff to get injunction is to be rejected.

23. It is also apt to point out in the case of *Ajeya Bharat Party vs. The Chief Election Commissioner* reported in 2009 AIHC NOC 697, the Division Bench of the Andhra Pradesh High Court has held that there is no provision for registration of flag, symbol or slogan is not a property to get it reserved or registered or to have a monopoly over it. Therefore, one political party consequently cannot have any right or grievance about flag, its design, symbol, colour or slogan canvassed and made use by other political party.

24. The above judgment was passed in the context of the petitioner being a registered political party claimed the flag used by the third respondent political party. While dismissing the petition, the Division Bench of the Andhra Pradesh High Court held that third respondent association which was registered as a political party for the lawful purpose and they have a fundamental right to form/register it as a political party and the particular flag, design and slogan is not anyone's property and therefore, the petitioner



cannot have any right or grievance about the flag, its design, symbol, colour or slogan canvassed and made use by the 3rd respondent party.

25. The said judgment is also followed by the learned Single Judge of this Court in the case of *Tamil Nadu Peasants and Workers Party vs. Kongu Naadu Munnettra Peravat and Kongu Naadu Munnettra Kazhagam* made in *OA.No.786 of 2011* and *A.No.356 of 2012* in *C.S.No.631 of 2011* dated *12.03.2012*.

26. In any event, the judgment of the Division Bench of the Andhra Pradesh High Court may have only persuasive value before this Court, however, the learned Single Judge in the earlier judgment of this Court reported in *1997 (II) CTC 47* (cited supra) has analysed the entire aspect of Bye-law and the flag set out in the Bye-law and held that the long usage creates proprietary right over the flag in a political party.

27. Considering the above, this Court is of the view that contention of the learned Senior Counsel of the defendant that there is no description for the flags have no legs to stand. Bye-law 4 clearly sets out the description of



the flag. The colour and size of the flag are not in dispute. When such being the position, when the defendant and supporters were removed from the primary membership in a General Council and the resolution is not found invalid by any Courts so far and merely the suits are pending challenging the validity of the resolution, this defendant cannot contend that he is still continuing as a primary member of the Party and can use the letter pad, symbol and flag of the party. Unless and until, his expulsion is declared to be void by the competent Court, he cannot interfere with the affairs of the General Secretary elected by the majority of members in the General Council Meeting. It is also relevant to note that though the suit itself is for permanent injunction, it is apt to point out the defendant has held the post of Chief Minister of Tamil Nadu thrice, besides, he had also held several posts in the said political party for many years. If, he is allowed to use the party symbols, flag and letter pad and interfere with the affairs of the General Secretary elected by the majority members by way of resolution, it will lead to serious chaos in the political arena. Though the main relief is also the permanent injunction, this Court is of the view that if the interim order is not passed at this stage, it will lead the cadre to serious confusion.



WEB COPY 28. Considering the fact that the resolution expelling the defendant has not been disturbed and interim applications filed by the defendants is also dismissed by the Court which has also reached finality, mere pendency of the suit will not entail the defendant to continue as a primary member or Coordinator of the political party, particularly when the majority of the members in the General Council expelled the defendant and its supporters by way of resolution. If the injunction is not granted citing that the main relief is also one and the same, it will defeat the very resolution passed in the General Council Meeting. For better appreciation, it is useful to refer the judgment in the case of *Deoraj vs. State of Maharashtra and others* reported in (2004) 4 SCC 697, wherein, the Hon'ble Supreme Court, in para 12 has held as follows:

“12. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case - of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of case totally in favour of the applicant may persuade the Court to grant an interim relief though it amounts to granting



WEB COPY



the final relief itself. Of course, such would be rare and exceptional cases. The Court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the Court may put the parties on such terms as may be prudent.”

29. Merely, because the suits are pending, it cannot be contended that the resolution is not valid. I may point out an analogy where a person is suspended from service or any association, merely, on the basis of challenge made against such suspension in the Court of law, one cannot contend that he continued to be a member or servant or employer of the association. Same analogy will also apply to the defendant. As long as the suspension or expulsion is not interfered or suspended by the competent Court, mere pendency of suit challenging such expulsion before the competent Court will not give any right to the defendant to claim as a primary member and also Co-ordinator. Mere calling himself as Co-ordinator of his own faction or different new faction may not be a problem, but, he claims to be a Co-ordinator of the recognised political party from where he is expelled same



will certainly lead to confusion among the party cadres and create serious consequences.

30. As far as the submission with regard to the present suit is filed only in the individual capacity of the plaintiff, on perusal of the Bye-law of the Party, Rule 20-A(viii) empowers the General Secretary to initiate legal proceedings on behalf of the party. The plaintiff has filed the suit as a General Secretary of the Party. Merely, because political party is not shown prior to the name of the plaintiff, the same may not be a reason to non-suit the suit. Therefore, the contention of the defendant in this regard cannot be countenanced.

31. Though this Court is also conscious of the fact that this discussion of merits is only for the purpose of interim application to find out prima facie case.

32. From the overall discussions, this Court is satisfied that the prima facie case and the balance of convenience is in the favour of applicant/plaintiff. If the defendant/expelled person is not restrained from claiming Party status, the same will lead to confusion among the cadres and



lead serious consequences. The loss that may occasion are irreparable.

WEB COPY

33. Considering the above, this Court is of the definite opinion that if the defendant is not restrained as sought by the plaintiff, it will lead to the confusion and the suit becomes academic. Accordingly, the plaintiff has established prima facie case and the balance of convenience is in his favour, if the injunction is not granted it will create irreparable injury to recognised political party.

34. Accordingly, these applications are ordered as prayed for.

18.03.2024

kmk/dhk

Internet : Yes/No

Neutral Citation : Yes/No



WEB COPY



40

N. SATHISH KUMAR, J.

kmk/dhk

O.A.Nos.787 to 789 of 2023
and C.S.No.181 of 2023

18.03.2024