



W.P.No.27894 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 11.01.2024

ORDER PRONOUNCED ON : 06.02.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.27894 of 2023
and W.M.P.Nos.27384 & 27385 of 2023

M.C.SABESAN

... Petitioner

/Vs./

1.THE REGISTRAR OF TRADE UNION,
D.M.S. CAMPUS,
TEYNAMPET,
CHENNAI – 600 006.

2.THE ADDITIONAL REGISTRAR OF
TRADE UNION – 1,
D.M.S. CAMPUS,
TEYNAMPET,
CHENNAI – 600 006.

3.THE CINE MUSICIANS UNION,
REP. BY ITS SECREATRY,
297, N.S.K. SALAI,
CHENNAI - 600 026.

4.THE CHIEF ELECTION OFFICER,
REP BY MT. K. BALASUBRAMANIAN,
CINE MUSICIANS' UNION,
297, N.S.K. SALAI,



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CHENNAI - 600 026.

5.DHINA

FORMER PRESIDENT.

6.JONAH BAKTHAKUMAR S.D.,
FORMER GENERAL SECRETARY.

7.S.BALESH BAJANDHARI

8.P.BASKAR

9.B.MALLIKARUJUNA RAO

10.T.K. MOORTHY

11.K.NIRMALA

12.R.RAHMAN

13.D.VELMURUGAN

14.M.C. MURALIRAJ

15.G.CHANDRASEKAR

16.A. DOMINIC XAVIER

17.I. MAGESH

18.P. PURUSHOTHAMAN

19.N.VEERARAGHAVAN

20.D.BERNAD @ BEN

21.R.K. DEVENDRANATH RAO



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22.K.MOHAMMED RAFICKUDIN @ RAFI

23.R. SELVARAJ

24.L.V.SUDHAKAR

25.B.G. VENKATESH

26.G. AMEEDIYAS

27.S.P. BOOPATHI

28.SITY PRAKASH RAO

29.DAVID LING

30.A. DAKSHNAMOORTHY

31.T.P. GOPALAKRISHNAN

32.G. KARPAGAM

33.MALATHI LAKSHMAANAN

34.V. MOHANRAJ

35.N. NAGARAJAN

36.A. PREMNATH

37.V. RAMANA

38.G. SATHISHKUMAR

39.V. SENTHIL DOSS

40.K.R. SRUTHIRAJ



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41.A. SUNDARRAJAN

42.S. SURENDRAN

43.L. N TIPPU @ EKAMBARESH

44.TAJ NOOR @ NOOR MOHAMMED

45.K. VASUDEVAN

46.VAIJEYANTHI

47.S.A. RAJKUMAR

48.V.R. SEKAR

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the 1st and 2nd respondents to audit and inspect the 3rd respondents union accounts for 2021-2023 and a statement showing all changes of office - bearers made by the 3rd respondent and not to ratify the same and without ratification and not to permit the 3rd respondent union to conduct election by the 4th respondent and consider the petitioner representation dated 10.09.2023.

For Petitioner : M/s.N.Sneha for
Mr.M.Jothikumar

For R1, R2 : Mrs.P.Raja Rajeswari
Government Advocate

For R3, R5, R6, : Mr.A.Mohamed Ismail
R17

For R4 : Mr.R.Abdul Mubeen



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For R8, R9, R10
to R13 and R15 to
R19, R21 to R48 : No appearance

For R7, R14, R20 : Mr.G.Paramasivam

* * * * *

ORDER

This Writ Petition is filed to direct the 1st and 2nd respondents to audit and inspect the 3rd respondents union accounts for 2021-2023 and a statement showing all changes of office - bearers made by the 3rd respondent and not to ratify the same and without ratification and not to permit the 3rd respondent union to conduct election by the 4th respondent and consider the petitioner representation dated 19.09.2023.

2.The petitioner is a member of Cine Musicians' Union/the third respondent herein from 1984 onwards. The petitioner's membership card No. is 195.

3.The third respondent Union was established in the year 1960, under the Trade Union's Act, 1926 in the name and style of "CINE MUSICIANS' UNION". The said Union is covered by it's own By-Laws and is functioning ever since it's establishment. The petitioner states that Rule 3 of the By-Laws speaks of different kinds of



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membership i.e. Temporary Membership, Associate Membership, Full Membership, Life Membership, Casual Membership and Honorary Membership. Rule 5(c) of the By-Laws speaks that the full and life time members alone have the right to vote and be elected. As far as the other members are concerned they only enjoy the benefit of the schemes. The petitioner further states that Rule 18 of the By-Laws speaks of the amendment to the By-Laws. The said By-Laws may be amended, altered, replaced or rescinded at any time, by a majority of the full and life members present and voting at the general meeting subject to the satisfaction of previous notice of at least seven days, along with the proposed alteration.

4. According to the petitioner, though Rule 18 indicates the majority of the full and life time members presence for invoking the By-Laws, Rule 13(1) speaks of the Annual General Meeting of all the full and life time members of the Union should be present. The General Council in respect of amendment of By-Laws is not vested with any powers, the only body that is authorised is the General Body which includes the full and life time members of the Union. According to the petitioner, the aforesaid Rules of the By-Laws were not followed, while altering the By-Laws. It was further stated that the By-Laws were not forwarded for approval to the respondents 1 and 2 to effectuate the same, as indicated under Section 28 of the Trade Union's Act, 1926.



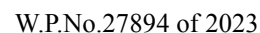
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The petitioner further disputed the appointment of the 4th respondent as an Election Officer and further alleged that the 4th respondent was not acting independently as an Election Officer. According to the petitioner, the 4th respondent informed that the associate members would also be permitted to cast their votes, which is against the By-Laws approved by the respondents 1 and 2. Hence, the full time and life time members addressed a letter to the 4th respondent on 02.09.2023, expressing their grievance and the 4th respondent replied on 08.09.2023 justifying his actions. It is also stated that the 4th respondent issued an election schedule on 26.08.2023. As per the schedule, the nomination date was fixed from 04.09.2023 to 09.09.2023, scrutinization of nomination was fixed on 11.09.2023, withdrawal of nomination was to be made from 12.09.2023 to 13.09.2023 and the final list published from 13.09.2023 and the polling and counting was scheduled on 24.09.2023. The petitioner filed his nomination for the post of President, but as he found that the resolution mentioned in the proceedings of the 4th respondent dated 08.09.2023 were not ratified by the 1st and 2nd respondents, he questioned its legality and made a representation on 18.09.2023 to the 1st and 2nd respondents. As the 1st and 2nd respondents did not act on the petitioner's representation. The petitioner filed the above writ petition for the aforesaid relief.



5.The 3rd respondent/Union filed the vacate stay petition and the affidavit filed in support of the vacate stay petition stated that the Annual General Meeting was held on 13.08.2023. In the said General Body Meeting which was convened after issuance of notice as required under the By-Laws, several resolutions were passed. One of the resolutions was for approval of the amendment to By-Laws that were resolved in the general Council meeting held on 18.06.2023 and the said amendment was approved by the General Body with overwhelming majority and as such the amended By-Laws were adopted. Thereafter, the amended and the General Body approved By-Laws were sent to the 3rd respondent/2nd respondent for approval. The third respondent after considering the legality of the By-Laws, by his proceedings dated 20.10.2023 approved the amended By-Laws. In view of the same, the writ Petition according to the 3rd respondent became infructuous and the same deserves to be dismissed.

6.The third respondent/Union further stated that the petitioner having participated in the election process by filing the nomination could not challenge the election. The third respondent further stated that it is settled law that after the issuance of the election notification, the election could not be stalled and the petitioner could only challenge the result of the election, if so aggrieved. As far as the accounts of the Union are concerned, the third respondent stated that the accounts



7. The learned counsel for the petitioner submitted that Section 28 (3) of the Trade Union Act states that a copy of every alteration made in the rules of a registered Trade Union shall be sent to the Registrar within fifteen days of the making of the alteration. The learned counsel referring to the dates with respect to the amendment of the By-Laws submitted that there was a violation of Section 28(3) of the Trade Union Act. The learned counsel further submitted that the as the amended By-Laws were forwarded to the 1st and 2nd respondents beyond the period stipulated under Section 28(3) the amended By-Laws would not apply to the present election.



8.The learned counsel for the third respondent/Union raised two preliminary objections. He submitted that the petitioner having filed his nomination for the post of President could not challenge the election process and that the amended By-Laws were approved by the respondents 1 and 2 on 20.10.2023 and therefore the writ petition became infructuous. The learned counsel submitted that even otherwise as the By-laws were amended validly, the approval granted would date back to the amendment as the Trade Union Act did not provide that the amended By-laws would become in effective for violation of Rule 28(3).

9.I have heard both the learned counsels and I have perused the materials placed on record.

10.Even at the inception I would like to state that the prayer in the writ petition is incoherent. The prayer in the writ petition is as follows:

"To direct the 1st and 2nd respondents to audit and inspect the third respondent's Union accounts for 2021-2023, and a statement showing all changes of office-bearers made by the third respondent and not to ratify the same, and without ratification and not to permit the third respondent Union to conduct election by the fourth respondent, and consider the petitioner representation dated



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19.09.2023".

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11. Reading of the prayer shows that the petitioner has not whispered about the invalidity or illegality of the amended By-Laws. The petitioner prays for audit and inspection of the third respondent/Union accounts for 2021-2023, not to permit the third respondent/Union to conduct election by the fourth respondent, and also to consider the petitioner's representation dated 19.09.2023. At the outset it is to be noted that the petitioner has filed the writ for a Writ of Mandamus and even as per the petitioner's own affidavit the representation was sent on 19.09.2023. The petitioner has not whispered in the affidavit as to why he rushed to the Court on the same day of the representation. Making of the representation in a Writ for Mandamus is not an empty formality, it is to bring to the notice of the authority that he has a duty to act or omit to do an Act. In the present case as already stated that the petition for Writ of Mandamus was filed simultaneously with the representation and too without citing any reasons for urgency. On the short ground, in my view, the writ petition cannot be entertained. It is further to be noted that the petitioner has filed his nomination for the post of President. The petitioner having participated in the election process by filing his nomination, in my view cannot stall the same. As far as the audit and inspection of the third respondent Union for 2021-2023 is concerned, the By-Law 17 of the third



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respondent/Union is very clear on this. The By-Law states that the Books of Accounts of the Union shall be open to inspection of any member or office bearer at the Registered Office of the Union during the working hours in which the office of the Union is open on any week days excluding holidays. In this regard, it is also pertinent to note that the third respondent/Union in the typed set of papers has filed the Statements of Accounts for the year 2020-2023. It is not the case of the petitioner that he was prevented from inspecting the Accounts. Therefore, if the petitioner has any grievance on this score it is for the petitioner to workout his rights before the appropriate forum in the manner known to law. As far as the changes of the office bearers is concerned, the said prayer cannot be countenanced in view of the amendment of the By-laws. As the amended By-Laws are approved by the respondents 1 and 2, if the petitioner has any grievance he is at liberty to challenge the same in a manner known to law before the appropriate forum. I am not addressing the the validity of the amended By-Law because it is not questioned in the writ petition. Further as liberty is granted to the petitioner to challenge the amended By-law, this Court feels that any opinion in this regard may prejudice the parties, if the same is challenged. For all the above reasons, I find no merits in the writ petition and the same deserves to be dismissed.



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12. Accordingly, this writ petition stands dismissed. However there shall be no order as to costs. Consequently, the connected miscellaneous petitions stand closed.

06.02.2024

Index : Yes / No

Internet : Yes / No

Speaking Order/Non-speaking order

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To

1. The Presiding Officer,
Labour Court,
Vellore.

2. The General Manager,
Tamil Nadu State Transport Corporation,
(Villupuram Division – II) Ltd.,
Vellore Region, Rangapuram,
Vellore – 632 009.



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N.MALA, J.

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PRE-DELIVERY ORDER IN
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