
(2007) 12 MAD CK 0124

In the Madras High Court

Case No : O.S.A. No. 372 of 2007 and M.P. No. 1 of 2007

Dr. M. Thirunavukarasu

APPELLANT

Vs

Indian Psychiatric Society Tribunal

RESPONDENT

Date of Decision : 20-12-2007

Acts Referred:

Citation : (2008) 3 CivCC 371 : (2008) 2 CTC 51

Hon'ble Judges : S.J. Mukhopadhaya, J;M. Venugopal, J

Bench : Division Bench

Advocate : K.M. Vijayan for LA Law, for the Appellant; R. Gandhi for V.S. Siva Sundaram, for the Respondent

Judgement

M. Venugopal, J.—The Original Side Appeal No. 372 of 2007 is filed by the appellant/applicant/plaintiff as against the orders passed by the

learned Single Judge in O.A. No. 874 of 2007 in C.S. No. 643 of 2007 dismissing the said application dated 01.11.2007.

2. The appellant/plaintiff has filed a suit C.S. No. 643 of 2007 praying for a Judgment and Decree declaring the order of the first respondent/first

defendant dated 04.07.2007 setting aside the election of the appellant/plaintiff as the Vice President of the Indian Psychiatric Society as null and

void, illegal etc., and for the grant of permanent injunction restraining the respondents/defendants their men, servants and agents or any one acting

under them from in any way interfering with the functions of the applicant/plaintiff as the Vice President/President-Elect to the Indian Psychiatric

Society for the years 2007-2008.

3. The appellant/plaintiff has filed O.A. No. 874 of 2007 in C.S. No. 643 of 2007 praying for an order of injunction restraining the

respondents/defendants, their men, servants, etc. in any way interfering with the functions of the applicant/plaintiff as the Vice President/President

Elect of the Indian Psychiatric Society for the year 2007-2008 pending disposal of the above application. On 23.07.2007 in O.A. No. 874 of

2007 in C.S. No. 643 of 2007 an interim injunction was granted. The learned Single Judge while dismissing the O.A. No. 874 of 2007 has

vacated the interim injunction and allowed the vacate stay application No. 6383 of 2007 filed by the second and third respondents.

4. The learned Counsel for the appellant/applicant/plaintiff contends that the properly elected officers cannot be removed in a Society, registered

under the Tamil Nadu Societies Registration Act except otherwise by a civil adjudication and that the Tribunal cannot decide the election matter of

the validity of the election of the appellant/applicant/plaintiff and that the Executing Council has no power to remove the individuals properly elected

by means of due election process and the Bye laws do not provide for nomination of Vice President or Treasurer or other persons.

5. According to the learned Counsel for the appellant/applicant/plaintiff, the appellant/applicant/plaintiff was entitled to hold Office for two years,

for one year as Vice President and for one year as President and that the appellant/applicant/plaintiff has challenged the verdict of the Tribunal

dated 04.07.2007 and that the Tribunal has no jurisdiction to decide the election dispute.

6. The learned Counsel for the respondents 2 and 3 submits that the appellant/applicant/plaintiff took part in the post Annual General Body

Meeting on 07.01.2007 and referred the matter of the conduct of elections in lieu of allegation of malpractice and irregularity and therefore, the

appellant/applicant/plaintiff cannot now raise any objection in regard to the jurisdiction of the first respondent Tribunal. Only after the

announcement by the President that the election matter would be referred to the Tribunal and also announced that the Constitution of the Tribunal

would be made at the Executing Council Meeting of the Society to be held on 07.01.2007, the Executive Council Meeting took place on

07.01.2007, in which the appellant/applicant/plaintiff took part and since there was a dispute in regard to the election procedure in the conduct of

Annual General Body meeting held on 06.01.2007, the Executing Council deliberated on the legal notice and made a decision to refer the matter to

the Tribunal of the Society for the verdict of the Tribunal. It is not in dispute that the Tribunal was constituted with its Chairman to examine the

terms of reference including the issues relating to the Election Procedures that took place during 2006-2007 etc.

7. The Tribunal gave its verdict to the effect that the election that took place in January 2007 was null and void with immediate effect and

individuals elected ceased to hold office with immediate effect and also made recommendation for the conduct of election for the year 2007-2008.

The Executing Council based on the verdict of the Tribunal passed an order on 14.07.2007 cancelling the election of the

appellant/applicant/plaintiff as Vice President/President Elect and two others and removing them from their office with immediate effect and that the

Executing Council Members nominated some individuals as an interim arrangement till the conduct of election afresh.

8. The learned Counsel for the appellant/applicant cited the decision reported in C.M.S. Evangelical Suvi David Memorial Higher Secondary

School Committee Karisal Vs. The District Registrar and Others, wherein it is held that "suit is the only remedy for letting evidence to sustain the

validity of elections" and contends that the present suit filed by the appellant/applicant/plaintiff is maintainable in law. Admittedly, the main suit C.S.

No. 643 of 2007 is pending. In the suit, there is also an application No. 6384 of 2007 filed by the second and third defendants is pending.

9. We have noticed the rival submissions made on both sides.

10. As on date, the appellant/applicant/plaintiff is not in Office and that the individuals nominated by the Executing Council by their decision on

14.07.2007 are incharge of the Society till election is conducted afresh. The prayer for an order of interim injunction in O.A. No. 874 of 2007 and

the second prayer in the suit relating to the grant of permanent injunction restraining the defendants, their men, servants and agents etc. in any way

interfering with the functions of the appellant/applicant/plaintiff as the Vice President/President Elect, Indian Psychiatric Society for the year 2007-

2008 are one and the same. An interim injunction which has the effect of granting final relief should not be granted, in our considered opinion.

11. We are of the opinion that in the case on hand, if the interim injunction order dated 23.07.2007 is allowed to continue, then it will cause greater

inconvenience and hardship to the normal functioning of the Indian Psychiatric Society.

12. In that view of the matter, we are of the opinion that the O.S.A. No. 372 of 2007 fails and the same is dismissed. The order passed by the

learned Single Judge in O.A. No. 874 of 2007 in C.S. No. 643 of 2007 dated 01.11.2007 is affirmed. However, the parties are permitted to raise

all contentions/issues in the trial of the suit in accordance with law and seek appropriate remedy thereto. There shall be no order as to costs.

Consequently, connected miscellaneous petition is also dismissed.