

(2013) 01 MAD CK 0128

In the Madras High Court

Case No : O.A. No. 869 of 2012 in C.S. No. 689 of 2012

Tamil Nadu Electricity Board Engineers Sangam and Mr. V.
Ashokkumar

APPELLANT

Vs

Mr. S. Manoharan Junior Engineer (Electrical) Safety Officer
North Chennai Thermal Power Station Chennai 120, Mr.
Kalyanasundaram Executive Engineer/KK Nagar Chennai
South Chennai 78, Mr. R. Govindarajan Assistant Executive
Engineer Chennai 78 and Mr. M. Subramanian Assistant
Executive Engineer Cables Madurai Metro SBI Officers IInd
Colony Bye Pass Road Madurai

RESPONDENT

Date of Decision : 08-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Industrial Disputes Act, 1947 — Section 12(3), 18(1)

Citation : (2013) 2 LLJ 37

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Judgement

Hon'ble Mr. Vinod K. Sharma, J.—The plaintiffs/applicants in a suit for permanent injunction restraining the defendants/respondents from

declaring themselves to be elected members of the first respondent and mandatory injunction to direct the respondents to hand over letter heads,

receipt books, cash voucher, seal of the first respondent, have filed these applications under Order XIV Rule 8 of O.S. Rules read with Order 39

Rule 1 and 2 of C.P.C. for grant of ad-interim injunction restraining the defendants/respondents from holding themselves out as the duly elected

office bearers of the first plaintiff. In support of the applications, affidavit has been filed which reads as under:

The suit has been filed seeking a decree of permanent injunction restraining the respondents/defendants, their servants, and agents from holding

themselves out as the duly elected office bearers of the first applicant, for a decree of permanent injunction restraining the defendants, their servants, and agents from obstructing and interfering with the functioning and management of the first applicant including by misusing the name of the first plaintiff/applicant, the letterheads, receipt books and cash vouchers of the first applicant and for a consequential decree of mandatory injunction directing defendants, to return the original letterheads, receipt books, cash voucher slips bearing the name of the first plaintiff/applicant illegally obtained from the offices of the first applicant.

The first plaintiff/first applicant Sangam was incorporated and registered on 13.11.1979 as a Trade Union under the Trade Union Act, 1925

bearing registration No. 124/MDS. The first applicant is one of the principal unions comprised of employees who worked for the erstwhile Tamil

Nadu Electricity Board which has since been trifurcated into three private limited companies incorporated under the Companies Act, 1956. The

resulting entities pursuant to such restructuring and organization by the Tamil Nadu Electricity Board are called the Tamil Nadu Electricity Board

Limited (hereinafter referred to as ""TNEB""), the Tamil Nadu Generation and Distribution Corporation Limited (hereinafter referred to as

TANGEDCO"") and the Tamil Nadu Transmission Corporation limited (hereinafter referred to as ""TANTRANSCO"").

The first applicant is duly recognised by the TNEB and represents the vast cross section of diploma Holders and part time degree Engineers in the

TNEB. The aims and objects of the first applicant are inter alia:

- A. To regulate the relations between their members and employers.
- B. To secure to them conditions of life and work viz., promotion, pay, provident fund, leave and allowances etc.
- C. To endeavour to redress their grievances.
- D. To provide relief to members against sickness, old age, unemployment and death.
- E. To endeavour to settle disputes between the members and their employer.

The constitution of the first applicant in terms of its by-laws provide that all those who are Engineers/Technical Assistants in the TNEB and all

Diploma/Degree Engineers working in any cadre in the TNEB shall be eligible to become members of the first applicant provided he/she agrees to

abide by the rules and bye laws of the first applicant that may be made by the first applicant Sangam from time to time. The bye laws also stipulate

that all members of the first applicant shall abide by the bye-laws and other rules of the first applicant and that he/she shall participate physically in

all the activities of the first applicant. Any member working against the interest of the first applicant can be suspended by the Executive Committee

or the General Council and may be expelled on a resolution passed to that effect by the Executive Committee/General Council after the member

concerned is given prior intimation of the action proposed.

The affairs of the first applicant are administered and regulated by the Central Executive Committee and the meetings of the General Council which

are held once a year where the central office bearers like the President, 3 Vice Presidents, General Secretary, Regional Secretaries, Treasurer,

Secretary-Publication, Secretary-Organization, Secretary-Administration, etc. are duly elected. The elected office bearers hold office for a year

from the date of the election till the date of the next election at the ensuing General Council meeting. The General Council is the supreme authority

of the first applicant which decides the policy of the first applicant and controls its activities. The quorum of the General council is fixed at 50% of

the elected General Council members. Any member intending to move a resolution can do so provided notice of the same is brought to the notice

of the General Secretary 7 days before the General Council meeting and any resolution on a subject shall be declared to have been passed if more

than 50% of the elected General Council members record their approval by ballots or by any normally adopted means. The day to day affairs of

the first applicant are regulated by the Central Executive Committee and its office bearers.

It must be stated here that the hierarchy of the first applicant has its roots in 4 branches who nominate the members to the General Council. Upto

75 members of a branch are eligible to elect 1 General Council member. A branch is entitled to elect 2 General Council members if the

membership of a branch is less than 150 and three General Council members if its membership is more than 150 members. The affairs of the

branch are regulated by the branch President, Vice President, Branch Secretary etc. who administer the affairs of the branches and are subject to

the superintendence of the General Council and the Central Executive Committee. The President, Vice President, General Secretary and the

Treasurer exercise overall superintendence and administer the affairs of the first applicant. The bye-laws also provide that any resolution/decision

passed at the General Council of the first applicant shall bind all the members of the first applicant including all the central office bearers.

The first applicant is comprised of Technical Assistants, Junior Engineer Grade II, Junior Engineers Grade I, Assistant Engineers and Assistant

Executive Engineers. In testament to its status as one of the principal trade unions in the TNEB, the first applicant has entered into numerous

settlements u/s 12(3) and 18(1) of the Industrial Disputes Act, 1947 ensuring better conditions of service for its members. The first applicant has

been responsible for fostering and engendering a spirit of co-operation and harmony as between its employers and its members.

The respondents have been members of the first applicant for some time past and the beneficiaries of the salutary steps taken by the first applicant

through collective bargaining in ensuring better conditions of service.

However, far from being appreciative of the efforts put in by the office bearers of the first applicant in fostering better conditions of service, the

respondents have continuously indulged in activities subversive of party discipline and aimed at engendering a confrontationist path with the office

bearers of the first applicant.

The respondents 1 to 4 for several years now have been guilty of fomenting anti union activities at the party office in Chennai and sending false

reports of the activities of the first applicant primarily aimed at creating a chaos in the administration of the first applicant at its branches and

bringing it to a halt.

At the General Council Meeting held on 12.6.2010 at Chengleput, the respondents behaved in an unruly manner disrupting the meeting and

preventing the affairs from being conducted. It was only after that the respondents were warned by the General Council that stern action would be

taken against them if they continues to do so. Peeved over the fact that they have not managed to get a toehold in the General Council of the first

applicant, the respondents have continuously managed to disrupt the functioning of the first applicant at the instance of rival unions who are bent on

creating a division in affairs of the first applicant.

The respondents have been guilty of not heeding to the directions of the General Council and have willfully violated express directions of the first

applicant and indulged in subversive acts aimed at destroying the unity of the first applicant including embezzlement of money. Such acts have been

elaborately highlighted in the order of suspension which the applicants will advert to later.

In accordance with the by-laws of the first applicant, notice for the 46th General Council Meeting of the first applicant to be held at Namakkal on

14.7.2012 and 15.7.2012 was sent on 26.6.2012 to all the General Council members of the first applicant along with the agenda for the meetings

of the General Council including election of the office bearers.

The applicants states that 96 General Council members out of 99 General Council members attended the meeting to elect the office bearers for the

year 2012-2013. The meeting started with a prayer after which the incumbent President addressed the General Council members who had

gathered for the meeting. Subsequently, the incumbent General Secretary, Secretary-Publication and Secretary-Kamadhenu Benefit Fund read out

the reports on the functioning of the first applicant for the previous year.

In the midst of these proceedings, the respondents with fifteen of their followers disrupted meeting by raising, slogans and unparliamentary language

against the existing office bearers and disrupted the meeting to proceed further. The respondents prevented the General Secretary from reading out

the General report for the previous year on the affairs of the first applicant and heckled the office bearers. Despite the members of the General

Council requesting the respondents to stop their tirade and urging them to express their views to resolve their differences, the respondents

continued with their diatribes as against the members of the first applicant. The General Secretary and other office bearers implored them to stop

their diatribe and urged them to ventilate their grievances after submission of the reports by the respective office bearers as any General Council

member was entitled to ventilate his grievances during the deliberations at the meeting. However, the respondents continued with their slogan

shouting and refused to stop their diatribe as against the office bearers. Once the reports were submitted, the members retired for lunch. Soon after

lunchtime, the meeting continued when the members deliberated over the reports submitted in the morning. However, the respondents along with their 15 followers were not present at the meeting. Thereafter, the General Council resolved to accept the reports.

Once the reports were accepted by the General Council, the election of office bearers commenced with the nomination of Er. S. Dhanavelu

Former Secretary/Trichy region, Er. A. Nallayanperumal, former General Secretary and Er. V. Chandrasekaran, former Secretary/KBF as the

election officers. The election officers took charge and announced the commencement of the election. At this juncture, the respondents reappeared

at the meeting and again started shouting slogans and quarreled with the election officers. Though the election officers tried to placate them, they

failed to heed the advice as a result of which the Election Officers had to warn the respondents from continuing with their diatribe so that the

election could be conducted peacefully.

Later, the Election officers called for nomination for the post of office of President. At this juncture, the respondents who were continuing with their

slogan shouting abruptly left the meeting realizing that they were in a minority and did not return thereafter.

The respondents knew fully well that they did not have the support of the members and would be defeated in the election. Meanwhile, the election

officers proceeded with the conduct of the election for the remaining office bearers including the President, Vice President, Secretary, Treasurer

etc. The applicants states that 74 members of the General Council out of a total of 99 General Council members elected the various office bearers,

the results of which are reproduced at Schedule I of the plaint.

Once the successful candidates for the respective posts were duly elected by the General Council members, the election officers declared the

results for the office bearers after which the elected office bearers took charge. This marked the end of proceedings for the 14th July.

On the 15th July, 2012, the office bearers and the members deliberated on the functioning of the first applicant passing various resolutions. On

account of the insolent acts of the respondents, the General Council passed a resolution suspending the respondents which was passed

unanimously on 15.7.2012. The details of the new office bearers were duly

recorded and minuted in the minutes book of the first applicant. The successful conduct of the election was also reported in the newspapers.

Incidentally, 79 members of the General Council have issued letters of support in favour of the present office bearers elected under the stewardship

of Anthony Padovaraj who was elected President which will go to show beyond doubt that the present office bearers were elected after a fair

democratic election conducted on 14.7.2012. This will belie the claims of the respondents who purportedly claim that they are the lawfully elected

office bearers of the first applicant. The election of the new office bearers were communicated to TANGEDCO on 16.7.2012. TANGEDCO

were also requested not to entertain any representation from the respondents.

As already stated, alarmed over the subversive activities of the respondents aimed at wreaking the internal party discipline and unity of the first

applicant, the General Council of the first applicant at the meeting held on 15.7.2012 resolved to suspend the respondents from the primary

membership of the applicant for a period of 3 years. By letters dated 16.7.2012 sent by the first applicant to all the respondents that the

respondents were also forewarned from misusing the letterheads of the first applicant, receipt books and collecting subscriptions and monies from

the members of the first applicant and passing themselves as office bearers of the first applicant. Further, the respondents were also warned from

indulging in any act detrimental to the affairs of the first applicant and claiming to be the representatives of the first applicant. It must be stated here

that the resolutions were passed unanimously primarily to put a halt to the anti union activities fomented at the instance of the respondents.

The respondents in addition to such activities have reportedly embezzled huge sums of money from various branch offices. The magnitude of the

fraud perpetuated by them is being unearthed till this day.

The applicants seeks leave of this Court to amend the plaint as and when the full particulars of the fraud committed by the respondents in relation

to financial mismanagement come out. The respondents have also managed to procure letterheads, seals bearing the name of the first applicant,

receipt books of the applicant which they are using with impunity and brazen defiance.

Rather than being lulled by the order suspending them from the primary

membership of the first applicant for a term of 3 years, the respondents however, have defied the members of the General Council and used the letterheads, seals, cash vouchers of the first applicant and purported to suspend the General Secretary of the first applicant. The procurement of the letterheads, cash vouchers, receipt books and seals bearing the name of the first applicant without the permission of the applicants and using them to pass themselves off as the authorized office bearers of the first applicant is fraudulent and illegal.

Notwithstanding the suspension, the respondents are continuing to indulge in anti union activities and are unauthorizedly and illegally claiming to be the office bearers of the first applicant. Such illegal and unauthorized conduct is detrimental to the functioning of the first applicant. The respondents have no authority in law to represent the first applicant when they have not contested the election and left the meeting held on 14.7.2012 abruptly.

As already stated, the respondents have done nothing to challenge the order of suspension in a manner known to law. Once they had been suspended from the primary membership of the first applicant for a period of 3 years, the respondents have no locus or authority in law to represent the first applicant. The respondents are bound by the decisions taken by its members at the General Council.

Despite the order suspending them from the primary membership of the first applicant for a term of 3 years, the respondents have brazenly and with impunity held to the public and their principal employers that they are the elected office bearers at the meeting held on 14.7.2012 and 15.7.2012. Interestingly, not a single document has been produced in evidence of the fact that they are the lawfully elected office bearers and the posts they allegedly hold.

Till date, the respondents have also not challenged the order of suspension in a manner to law. That being the case, the acts of the respondents in passing themselves off as the duly elected office bearers when in fact they have been suspended, is a malicious distortion of facts.

The applicants thereafter written to the Commissioner of Labour and the Registrar of Trade Union on 21.7.2012 pointing out that the respondents had been misusing the receipt books and letterheads of the first applicant and requested them to intervene and stop such unlawful acts committed

by the respondents. The applicants have also requested the TANGEDCO to refrain from entertaining any representations from the respondents to

the effect that they are the duly elected office bearers.

The respondents were served notices sent by TANGEDCO dated 25.8.2012 requesting the applicants to assemble at Phykara auditorium,

NPKRR Maligai to discuss the issue of wage/workload revision on 1.9.2012.

On 1.9.2012, the office bearers of the first applicant objected to the presence of the respondents at the meeting as they had been suspended from

the membership of the first applicant. No deliberations took place at the meeting and the meeting was later deferred. However, the respondents

were again managed to obtain notices sent by TANGEDCO, dated 4.9.2012 asking the first applicant to participate in discussions relating to the

draft Tripartite agreement on 8.9.2012.

Despite a representation being sent by the applicants on 6.9.2012 imploring TANGEDCO from entertaining any representation from the

respondents, TANGEDCO was willing to entertain representations from the respondents purely to spite the applicants and foment discord in the

rank and file of the first applicant.

The respondents have written letters to Canara Bank and Central Bank where the first applicant held its accounts and implored them to freeze the

accounts, which leads to paralyzing the affairs of the first applicant which is dependent on the account for carrying on its daily activities.

Such action of the defendants are calculated to bring the affairs of the first applicant to a halt and must be injuncted at the earliest. The

TANGEDCO has also entertained representations from the respondents ostensibly with a view to break the rank and file of the respondents and

drive a wedge into the affairs of the applicant which hitherto have been run peacefully.

The plaintiffs/applicants submit that the respondents/defendants falsely claiming to be the authorized office bearers of the applicants Sangam which

is illegal, unlawful and unauthorized. After being suspended from the plaintiffs/applicants Sangam, the respondents had engaged in brazen acts

amounting to theft and passing themselves off as the duly elected office bearers which have seriously undermined the functioning of the

plaintiff/applicant Sangam.

Left with no other alternative, the first plaintiff/first applicant filed W.P. No. 24597 of 2012 before this Court seeking a writ of mandamus, directing

TANGEDCO not to deal with the respondents as if they also represent the first applicant union inspite of their suspension by the first applicant and

act on any representation of the respondents as if they represent the first applicant or permit or require their presence in the meetings with the first

applicant and issue such further directions as this Court deem fit and proper in the facts and circumstances of the case.

This Court by an order dated 7.9.2012 restrained the TANGEDCO from conducting the meeting to be held on 8.9.2012 till 17.9.2012. On

17.9.2012, this Court was pleased to extend the interim order till 20.9.2012 which was thereafter extended at subsequent hearings. However, by

an order dated 12.10.2012, this Court disposed of the writ petition holding that the issue of the duly elected office bearers of the applicant ought to

be adjudicated by a civil Court. This Court was however, pleased to extend the interim order obtained in the writ petition till 17.10.2012.

Left with no alternative to vindicate its grievances, the plaintiffs/applicants have approached this Court to put a stop to the illegal activities of the

respondents. The respondents ought not to be allowed to continue their illegal and subversive acts against the first applicant which have the effect

of wrecking the inner party discipline and unity of the first applicant. Irretrievable harm, prejudice and hardship will be caused to the applicants if

the respondents are not enjoined from holding themselves out as the duly elected bearers of the General Council of the first applicant and to

restrain the respondents, their agents, men and servants from obstructing and interfering with the functioning and management of the first applicant

by misusing the letterheads, seals bearing the name of the first applicant, receipt books and cash vouchers.

The respondents have caused considerable prejudice and tarnished the reputation of the first applicant in the eyes of their members, employers and

the public who have got the impression that affairs of the first applicant have taken a downward spiral supposedly on account of the tirade

launched by the respondents. Such loss of face is irredeemable and the first applicant has taken a serious hit to its reputation and prestige as one of

the principal trade unions in TANGEDCO.

The respondents are bound to compensate the applicants for the pain and harm inflicted on account of the thoughtless, vindictive and malicious

actions and the loss caused by the embezzlement of monies committed by the respondents.

The applicants submit that they are entitled to seek an order of ad-interim injunction restraining the respondents, their servants, and agents from

holding themselves out as the duly elected office bearers of the first applicant at the General Council meetings of the first applicant held on

14.7.2012 and 15.7.2012.

The applicants submit that they are entitled to seek an order of ad-interim injunction restraining the respondents, their servants, and agents from

obstructing and interfering with the functioning and management of the first applicant including by misusing the letterheads, receipt books, seals

bearing the name of the applicants and cash vouchers.

The applicants have a prima facie case for grant of injunction in the given fact that the respondents despite being suspended from the primary

membership of the first plaintiff/first applicant Sangam, have illegally and unauthorizedly continued to hold themselves out to the public as the duly

elected office bearers of the first applicant Sangam. Irreparable hardship and prejudice will be caused to the applicants if the respondents, their

servants, and agents are not restrained from obstructing and interfering with the functioning and management of the first applicant including by

misusing the letterheads, receipt books and cash vouchers, enrollment forms, seals bearing the name of the first applicant and passing themselves

out as the duly elected office bearers of the General Council. The balance of convenience is irrefutably in favour of the applicants as it has suffered

a loss of face on account of the malicious actions of the respondents and will continue to suffer if the respondents are allowed to continue with their

illegal acts. Irreparable hardship will be caused to the applicants if this Court does not restrain the respondents from holding themselves out as the

duly elected office bearers of the first plaintiff/first applicant.

More so, as this Court has extended the interim order obtained in W.P. No. 24597 of 2012 only till 17.10.2012, it is imminently possible that the

respondents will once again participate in any meeting or discussion called by the TANGEDCO. This will exacerbate unrest in the unions and

ought to be nipped in the bud at the earliest.

Interests of justice require that this Court pass an order of ad-interim injunction restraining the respondents, their agents, men and servants from

holding themselves out as the duly elected office bearers of the first applicant at the General Council meetings of the first applicant held on

14.7.2012 and 15.7.2012. Interest of justice require that this Court pass an order of ad-interim injunction restraining the respondents, their agents,

men and servants from obstructing and interfering with the functioning and management of the first applicant including by misusing the letterhead,

receipt books and cash vouchers.

Interests of justice require that this Court pass an order of mandatory injunction directing the respondents to return the original letterheads, receipt

books, cash vouchers slips, enrollment forms and seals bearing the name of the first applicant illegally obtained from the office of the first applicant.

2. Counter affidavit has been filed by the defendants 1 & 2/respondents 1 & 2 which reads as under:

That the description in the cause title of the second applicant and the second applicant as General Secretary is specifically denied as he is not

legally elected General Secretary, and therefore, neither in the first applicant's capacity nor as a General Secretary in the second applicant's

capacity the civil suit as well as the application is maintainable, since on the face of records and as for the bye-laws of the Sangam and in

consonance with and pursuant to the elections held on 14.7.2012 the second applicant having not participated in the election, is no longer General

Secretary. In fact, the second applicant has been suspended from the Sangam as per the bye-laws and in accordance with the Rule of law.

Therefore, he has no locus standi to maintain the suit as well as any applications thereto. The above mentioned averments/statements are facts in

evidence, however taking advantage of the office bearership which was held by the second applicant prior to the elections, he had taken advantage

to hold the Sangam to ransom and also by posing himself as if the elections were held properly and his team of office bearers stood declared when

actually and factually the General Council's meeting held on 14.7.2012 declared the team of office bearers of the respondents/defendants and

others as legally elected office bearers and to the said effect the electricity board

was intimidated which was duly acknowledged and accepted from being acted upon.

The reasoning is further fortified by calling upon this respondent for participation in the policy decision and various other meetings so as to espouse the cause of the members of the Sangam.

That apart the suit itself is not maintainable for non-joinder of proper parties in the sense that the Electricity Board which is the authority concerned

has been failed to be impleaded and if any orders are passed ultimately the same may not be able to be executed as the so called inter-party

dispute can be finalized only in the presence of the Electricity Board. Without prejudice to the above primary objections, this respondent submits

and traverse various other averments those that have been made in the applications.

This respondent refrains from specifically denying the averments in paragraphs 1 to 7 of the application, except to say that as a Sangam in the

absence of second applicant that of the description of the first applicant as General Secretary, all other aspects and averments to the extent those

that are not contrary to the aims and objectives and that of the bye-laws of the Sangam.

This respondent further specifically denies the averments in paragraph 8 of the application as totally false without any basis. This respondent

submits that the averments that the defendants have been members of the first plaintiff for sometime past is true. But they were not merely members

and the first respondent/first defendant has been as office bearers in various capacities for 30 years, including as General Treasurer that the second

respondent/second defendant for over 15 years as office bearer in various capacities, including Regional Secretary, Chennai region, that the third

respondent/3rd defendant for over 33 years, in various capacities including State President and that the 4th respondent/4th defendant for 15 years

in various capacities including Secretary, Madurai Tirunelveli region.

In so far as the statement about the General Council's meeting held on 12.6.2010 at Chengalput, this respondent submits that when an objection

regarding mismanagement, mal-administration and malfunctioning and certain fraudulent transactions which has resulted in embezzlement of the

funds of the Sangam can be questioned by circulation of a notice to the members

present in the General Council held on the said date. It was the second applicant who created ruckus and confusion to get over all the above said irregularities. However, clandestinely managed to hold the meeting with hired gundas and henchman and prolonged his tenure. But when this was sought to be once again promulgated during this year's election held on 14.7.2012, this respondent and others who were caught unaware during the previous General Council's meeting held on 12.6.2010, behaved cautiously controlled the members of the General Council meeting, conducted the elections as per bye-laws and rules and immediately declared the results, recorded the minutes and left the place in order to avoid untowardness and for a cordial atmosphere to prevail upon amongst all.

It came to light subsequently that after this respondent left the election hall, the second applicant is said to have proceeded further with the election resorting to a stage managed team of his election officers against whom no confidence or rather bias was specifically attributed even at the earliest in point of time, and therefore, in an haphazard manner and even without knowing as to how the General Council and the elections thereto should be conducted is said to have held the election behind the back of this respondent and in a haste even without declaration of the results of each and every post as to how a declaration of results in an election is to be made had simply reduced into writing the names of persons for respective posts without declaration of their results, however seems to have altered or rather covered up the illegality by creating a document to the effect that except one post all other office bearers, there was no contest which falcity is further exhibited since the Organizing Secretary is said to have been elected in absentia which is impermissible and further when he was actually attending the funeral rites of his brother elsewhere at Pudukottai is said to have signed the attendance as Organizing Secretary without being physically present and thereby the said document would exhibit that each and every documents annexed in the typed set are totally fabricated one, drawn and made subsequent to the filing of the writ petition though not at this distance of time atleast subsequently without anticipating that the same would result in legal battle where evidence beyond reasonable doubts are to be established.

That in so far as the bye-laws is concerned, minutes of the declaration of the results in the election are to be authenticated by the President. In the case on hand, the same is conspicuously missing as there is no signature of the so called elected President but only that of the biased election officers.

It may not be out of context to mention here that this respondent and the others who are legally elected office bearers took immediate steps after the declaration of the results on all those respondents and others as office bearers immediately resolved to place the second respondent under suspension apart from others who had acted in flagrant violation of the bye-laws stipulated and the same was communicated not only to the concerned individual but also to the Board to the effect that they were suspended from the primary membership of the Sangam and for their anti Sangam activities.

Since it was brought to the notice that irregularities were committed at Tanjavur branch when only 2 officials could be elected for 132 members, 3 were elected and around 85 persons had represented that the election was in total violation sought for re-election and in view of the report received from those persons not only pertaining to the branch election but also that of misappropriation in various capacities, falsity in branch election and various other irregularities in the conduct and function of the Sangam itself, the above was resorted to.

Further, this respondent had also intimated about the valid election held by them and the results were duly acknowledged by the electricity board.

However, after all these had happened and taken steps, the second respondent by anti-dating the communication dated 16.7.2012 which was

actually dispatched on 24.7.2012 and that too after receipt of lawyer's notice dated 21.7.2012, received on 23.7.2012 regarding defamation is

said to have placed this respondent and others under suspension and also claims that the same has not been challenged when the fact remains that

the second applicant was already suspended from the primary membership of the Sangam as early as 14.7.2012 and had no right whatsoever to

continue in the Sangam because of spate of allegations pouring from various corners of the General Council members about his misdeeds.

This respondent further specifically denies that the averments made in

paragraphs 12 and 13 are without any basis, totally false and are specifically denied, except to the extent mentioned herein. That the so called election of the first applicant and that of the designation of the second applicant as General Secretary is not legally valid since the election was not held properly and the election officer S. Dhanavelu was a biased person and the other 2 election officers were his former disciples and strict followers of Ashok Kumar of the above said election officer and therefore whatever had taken place on the so called election day is the sole decision of the said S. Dhanavelu who is an ardent supporter of the second applicant and it is on the basis of the protest that this respondent objected to the said S. Dhanavelu being an election officer as the basis was writ large even before the General Council could commence.

This respondent resorted to hold the election in a manner known to law and within the framework and ambit of the bye-laws, Rules and Regulations. It is pursuant to the said election wherein one N. Sundarrajan who was appointed as election officer and there being no opposition from any quarters, the election came to be held and this respondent and various other office bearers were declared elected on 14.7.2012 with minutes recorded to the said effect and all that which is to be done as per bye-laws were recorded and submitted to the electricity board.

But in so far as the averments in paragraph 12 is concerned, that the results were declared as per schedule I of the plaint is invalid with simple reason that the same was made and done after filing of the writ petition and on the basis of various objections raised by this respondent, though not all lacunae a few of them has now been set at right.

However, the applicant may not be able to establish or prove beyond any reasonable doubt that the Organizing Secretary was present at the time of election and has also participated in the same. In fact, the signature affixed on 14.7.2012 by the Organizing Secretary would establish what was mentioned, drafted and written in the minutes are totally an after thought after filing of the writ petition and signatures have also been obtained thereafter and to prove the same, one small piece of evidence is that the Organizing Secretary is said to have participated on 14.7.2012 at Namakkal when actually his blood brother's funeral and other final rites were taking place on the said date.

While fabricating the records, the applicant had failed to note that the Organizing Secretary was not physically present on the day of election and

inabsentia, election is impermissible as per bye-laws. Therefore, to say that the office bearers deliberated on the functioning of first applicant's

association is utterly false.

On the contrary, this respondent held the elections in a perfect manner and finally submitted the results of the electricity board on 16.7.2012 itself

which has been duly acknowledged by the electricity board and that was the reason why this respondent were recognized and called for various

meetings and discussions thereto.

That the reasoning for calling the first applicant by the board for discussion is only to purchase peace amongst the Sangam because the first

applicant is being supported and backed up by gundas and is yet to surrender the books of accounts and other material documents of the Sangam,

despite having lost the election. However, posing himself to have been elected when it is the submission of this respondent that the second

applicant and other former office bearers were all suspended by proceedings dated 14.7.2012 with an intimation to the electricity board about the

same and on receipt of the same, the first respondent had chosen to anti-date very many documents being the custodian of records of the Sangam

which were failed to be handed over and thereby is said to have suspended this respondent and others to a later date on 24.7.2012, anti-dating as

if the same has been done on 16.7.2012, as it is evident from the postal seal however to synchronizing it has been anti-dated, which came to be

issued after receipt of counsel's notice.

That the averments made in paragraphs from 13 to 18 are specifically denied as without any bias. In so far as the averments in paragraph 14 are

concerned they are totally contrary to the facts, and after though as because, even as early as 16.7.2012 it is alleged that this respondent were

warned from misusing the letterheads, receipt books, collecting subscriptions and money from the members, apart from indulging in any act

detrimental to the affairs when the fact remains that while issuing the suspension order all the above reasoning does not arise, thereby pleads itself

would exhibit that the election of this respondent was legal and only to cover up the misdeeds and other illegal activities, the first applicant had

chosen to mention all these on an anti-dated letter as because on the day of election none of the reasoning mentioned above will be available and it

is only in due course of time, all these activities are likely to crop up, including the so called embezzlement which was the sole reason that the

second applicant was called upon to submit the accounts as he had amazed the wealth by embezzlement of funds from the Sangam.

That the averments made in paragraph 9 are no longer valid in view of Hon''ble High Court dismissing the writ petition directing to adjudicate the right through a civil court.

This respondent further specifically denies the averments in paragraph 20 and 21 as totally false and without any basis.

That the writ petition filed by the applicant on 7.9.2012 in which there was no whisper about the various resolutions passed on the so called

alleged election day, and moreover the resolution Nos. 28, 29 and 33 & amp; 34 are totally an after thought incorporated only recently since even

while addressing the Commissioner of Labour, vide its letter dated 21.7.2012 nothing has been mentioned and moreover there was no necessity to

pass any such resolution as mentioned in paragraphs 28, 29 and 33 & amp; 34.

That apart, the minutes are invalid as it is unsigned by the President, thereby giving room for suspicion and also for incorporating of any event to

suit the convenience at a later point of time.

It may also be worthy mentioning here that the second applicant is capable of creation of records, much less bogus records and falsification of

documents etc., as it is evident that the Sangam''s publication called ""minnalaibore"" the name of a printing press which was not at all in existence

and thereby the cost loss to the postal department by creation of bogus records which is pending investigation.

Further, there are complaints about the illegal maintenance and irregularities in the accounts of the Sangam by the second applicant when he was an

office bearer which had resulted in these respondents taking all earnest efforts to hold the election legally and to give a quitious to the mal-

administration and mismanagement, coupled with embezzlement of funds of the Sangam to be set at right, and that was the reason why, every care

and caution was taken by these respondents to hold the elections in a fair and lawful manner. Hence, the averments made in the applications are

without any basis and therefore liable to be dismissed.

That for the various reasons mentioned above and in the teeth of the fact that this respondent and other office bearers have been valid and legally

elected to the Sangam, the applications and the suit are liable to be dismissed with exemplary cost since the entire averments are totally concocted,

fabricated, unimagined and stage managed for the purpose of filing the suit and none of the documents which have been placed reliance upon are

genuine, in fact have been written subsequent to the filing of writ petition and hence the applications are liable to be dismissed.

3. In support of the application, Mr. V. Prakash, Senior counsel placed reliance on the notice of the General Council meeting, dated 26.6.2012.

Reliance is also placed on the result published by the election officer as also Minutes of the meeting held on 14.7.2012 and 15.7.2012. The

reliance is also placed on the letter, dated 16.7.2012 suspending the defendant from membership of the plaintiff.

4. The proceedings of the meeting shows that presence of 109 persons, where respondents were also present. The applicant/plaintiff has also

placed on record, the election result by the election officers. The fact of appointing of election officers is admitted by the respondents in their

counter though they disputed the eligibility of appointment of election officers on the ground of bias.

5. By referring to the document placed on record, the learned Senior counsel vehemently contended, that the averments made in the affidavit are

duly supported by the documents placed on record which prima facie shows that election of the executive meeting was held on 14.7.2012 and that

the defendants/respondents were suspended from primary membership on 15.7.2012.

6. The factum of notice having been issued for the General Council meeting is also not disputed by the respondents in the counter affidavit filed.

7. The stand of the respondents is that the election of the members as shown in schedule of the plaint cannot be said to be valid election, as it has

not been signed by the President. Furthermore, the General Secretary whose presence was shown, was not present which causes shadow of

doubt on the election of the office bearers. No importance can be paid to this stand in view of counter admitting the issuance of notice and also that

election was held on the date fixed.

8. While admitting that the election was held on 14.7.2012, the stand of the respondent is that the election was in fact held by appointing Mr. N.

Sundararajan as election officer to whose appointment, there was no opposition, but no document has been placed on record in support of this

submission.

9. It is also stand of the respondent that election result was declared on 14.7.2012 declaring that the respondents as office bearers. No documents

have been placed on record in support of this averments also. Whereas the averments of plaintiff/applicant are supported by documents, and the

reading of the counter also shows that the averments made in paragraph 1 to 7 of the affidavit are not disputed.

10. The averments made in paragraph 8 onwards in the affidavit are denied. It is interesting to note that in paragraph 5 of the counter affidavit, it

has been stated that objection was raised to election of three members from Tanjore branch. In the counter affidavit, it is also stated that election

was not held properly, as the election officer Mr. S. Dhanavelu was a biased person and the other two election officers were his former disciples.

This amounts to admission that those persons were appointed as Election Officer.

11. As already noticed above, there is not an iota of evidence that any election was held by Mr. N. Sundarrajan, nor the defendants/non applicants

have challenged the election held by Mr. S. Dhanavelu and other two election officers who were stated to be biased.

12. An attempt was made to seek adjournments to place on record documents, it is not understood why it was not done along with the counter.

There is no provision in law for piecemeal pleadings. The party is required to file complete pleadings at the time of filing counter and cannot seek

adjournment, when the matter is being heard, just to file document, without giving reasons as to what stopped the respondents from filing necessary

documents in support of affidavit.

13. It is also admitted that books of accounts and material documents of plaintiff No. 1 are with the plaintiff, which is claimed to be illegally

withheld by plaintiff/applicant.

14. In absence of proceedings of election said to be held by the defendants/respondents, the stand of the defendants/respondents prima facie

cannot be accepted, specially keeping in view of the fact that the minutes of the election placed on record by the plaintiff/applicant shows that the presence of defendants in the meeting.

15. Much reliance was placed on the fact that the proceedings have not been signed by the President. This cannot be a ground to hold that no election was held, as in the counter affidavit itself, there is an admission that the election was held though claimed to be illegal and contrary to bye-law.

16. Therefore, averments made in the affidavit read with documents placed on record, prima facie proves that the election of the office bearers was held on 14.7.2012 which is admitted case of both parties. While plaintiff/applicant have placed on record and the proceedings have disclosed the names of elected office bearers. The respondents/non applicant are totally silent, either with regard to election or with the list of office bearers so elected, in the alleged election held by the respondents The plaintiff therefore, have been able to show a prima facie case. The balance of convenience is also in favour of the plaintiff/applicant and the plaintiff No. 1 is likely to suffer irreparable loss if injunction as prayed for is not granted, as the respondent would continue to obstruct the functioning of trade union, which will be against the welfare of the members.

Consequently, both the applications are ordered as prayed for, pending disposal of the suit.

No costs.