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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **I.As. 8971/2019, 8972/2019 in CS(OS) 148/2018**

THE YOUNG MENS CHRISTIAN ASSOCIATION OF  
ERNAKULAM & ORS.

..... Plaintiffs

Through: Mr. P. I. Jose & Ms. P.S.  
Chandralekha, Advocates (M-  
9811556966)

versus

NATIONAL COUNCIL YMCAS OF INDIA & ORS. .... Defendants

Through: Mr. Thomas P. Joseph, Sr. Advocate  
with Mr. Puneet Jaiswal, Advocate  
for D-1 (M-9891234058)  
Mr. Jayant Mehta & Mr. Ranjay,  
Advocates for D-5&6  
Mr. Koshy Jha, Advocate for D-7 (M-  
9910398534)

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**ORDER**

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**08.07.2019**

**I.A. 8972/2019 (for exemption)**

1. Allowed, subject to all just exceptions. I.A. is disposed of.

**I.A. 8971/2019 (for directions)**

2. This is an application filed on behalf of the National Council of YMCAs of India – Defendant No.1 seeking orders in respect of the Principal of the YMCA College of Physical Education, Chennai (*hereinafter 'Chennai college'*) who has been removed from office. The Defendant No.1 has approached this Court in view of the events that have transpired in the end of June and in early July in respect of this college.

3. The Chennai College is an institution run by Defendant no.1. There are several disputes pending in the present suit, in respect of the elections,



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administration and functioning of Defendant No.1. This Court has been passing orders from time to time, including in respect of the conduct of elections, preservation of records etc., The Defendant No.1 is governed by its National Board and National Executive, which is headed by the President, who is the overall head of the Defendant No.1 as per its Constitution and Bye-laws etc.,

4. Mr. Lebi Philip Mathew was the President of the Defendant No.1 at the time when the present suit was filed. Thereafter, an Election Officer was appointed for conduct of elections to Defendant No.1. Pursuant to the orders of this Court, elections were held on 2<sup>nd</sup> December, 2018 for the post of President, Vice Presidents and Treasurer. No elections were held to the National Executive. Mr. J. B. Koshy was elected as the President – which has also been challenged before this Court. Various applications were filed which have been heard in respect of the elections, post of Secretary etc., Judgement was reserved in the said applications on 9<sup>th</sup> May, 2019.

5. The Chennai college is an institution run by the Defendant No.1. Mr. Lebi Philip Mathew is holding the position of Chairman in the said college. However, it is the contention of Defendant No.1 that the said post of Chairman was held by Mr. Mathew only in his capacity as the President of Defendant No.1 and in no other capacity. Accordingly, with the election of Mr. J. B. Koshy as the President, Mr. Mathew ought not to function as the Chairman. However, the submission of Mr. Mathew is that he was nominated to the said position as per the Bye-laws and not in his capacity as the President. Since there is no National Executive currently, he can continue to hold the post.

6. As an off-shoot of this dispute, applications were filed in April, 2019



being I.As 4859-60/2019 wherein allegations were made that Mr. Mathew was trying to siphon off funds of the Chennai college and reliefs were sought. In the said applications, vide order dated 4<sup>th</sup> April 2019, it was held as under:

*“1. These are applications moved by Defendant no. 1 - National Council of YMCAs of India (YMCA Council) in the present suit for impleadment of Mr. Lebi Philip Mathew and Mr. Koshy Mathew in the present suit and further directions against them.*

*2. Allegations in these applications are that Mr. Lebi Philip Mathew, who was earlier the national president of the YMCA Council continues to function as chairman of YMCA College of Physical Education, Chennai (YMCA College, Chennai) even after having been unseated as the President of the YMCA Council. The further allegation is that a large number of cheques are being issued and amounts from the bank accounts of YMCA College, Chennai are being siphoned off.*

*3. Accordingly, prayers are sought for restraining Mr. Lebi Philip Mathew and Mr. Koshy Mathew from operating the bank account of YMCA College of Physical Education, Chennai and directions for an investigation are also sought.*

*4. It is pointed out by Ld. Senior Counsel appearing for the YMCA Council that as per Article VII 3 (a) (iii) the management of College of Physical Education, Chennai has to be chaired by the National President of the YMCA Council. Mr. Lebi Philip Mathew was acting as the chair of the YMCA, College Chennai when he was the President of the National Council but since he is no longer the President, he cannot continue functioning in the YMCA College, Chennai. Article VII (3) (a) reads as under:*

*“It shall be for the National Board:*

*...*



(iii) to constitute Committees of Management for all the Projects of the Society,

(a) The Chairman of the Committee of Management/Board of Trustees of India Student Hostel, London will be the National President/Nominees of the National Board of the National Council of YMCAs of India

(b) The Committee of Management of College of Physical Education, Chennai will be chaired by the National President/Nominee of the National Board of the National Council of the YMCAs of India. "

5. From the above provision in the Memorandum of Association of the YMCA Council, it is clear that the YMCA College, Chennai is to be chaired by the National President. This court is currently seized of the disputes in respect of the election to the post of President.

6. Under these circumstances, Mr. Lebi Philip Mathew and Mr. Koshy Mathew are impleaded as Defendant Nos.5 & 6 in the present case. Ld. counsels appearing for the Defendants submit that they do not have any instructions either by Mr. Lebi Philip Mathew or Mr. Koshy Mathew to accept the summons and notice on their behalf. Summons and Notices be served upon them. Notice be served by e-mail. Defendant Nos.5 & 6 to file their replies before the next date.

7. A perusal of the letter dated 2<sup>nd</sup> April, 2019 written by Dr. George Abraham, Principal of YMCA College of Physical Education, Chennai handed over today, shows that there is disturbance being created in the working of the YMCA College, Chennai. There is also apprehension that the amounts from the bank accounts of the college are being siphoned off. Under these circumstances, it is directed that any cheques that have to be issued from the accounts of the YMCA College of Physical Education, Chennai shall be counter signed by



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Dr. George Abraham in addition to the existing signatories.

*8. All the parties submit that there is an urgency in the matter as the records of National YMCA Council are under lock and key and the keys have been deposited in this Court. List on 25<sup>th</sup> April, 2019 for conclusion of submissions of all the counsels in the various I.As. Dasti.”*

7. The present application has now been moved stating that Dr. Abraham, the Principal has been removed in a completely unlawful manner from his position as the Principal of the college. It is submitted by Mr. Thomas P. Joseph, Ld. Senior Counsel that vide order dated 4<sup>th</sup> April, 2019, this Court had directed that all the cheques, which would be issued from the accounts of the Chennai college, would be counter signed by Dr. George Abraham as there were apprehensions that the said funds are being siphoned off by the current management, which is headed by Mr. Lebi Philip Mathew. It is further submitted by Mr. Thomas that Mr. Lebi Philip Mathew is the Chairman of the Chennai college in his capacity of President of Defendant No.1 and currently since he is no longer the President of Defendant No.1, he cannot continue as the Chairman of the said college and chair the meetings of its Board. He relies on Article VII (3)(a) of the Memorandum of Association of the NCYI. He submits that while this Court was seized of the matter in respect of the election of the President of the National Council and considering the order dated 4<sup>th</sup> April, 2019, there was no urgency to pass the order removing and not extending the term of Dr. George Abraham. He relies upon various documents to show the manner in which the Principal – Dr. George Abraham has been treated. He submits that the initial



appointment of Dr. Abraham was not for a fixed term, though the deputation of Annamalai University mentioned the said term. By using the said deputation term as an excuse, an illegal meeting was convened by the College management and a resolution was passed as under:

*“The YMCA College of Physical Education Board of Management unanimously resolves not to give letter to Annamalai University for the extension of lien period of Dr. George Abraham.”*

8. Thereafter a letter dated 24<sup>th</sup> June, 2019 was issued informing Dr. Abraham that he is relieved from his duties. There was enormous disturbance created in the college, which led Dr. Abraham to approach the Madras High Court. The High Court vide its order dated 1<sup>st</sup> July, 2019 directed in the said writ petition as under:

*“This petition has been filed seeking for police protection.*

*2. It is seen from records that there is already a Scheme suit which is pending before the High Court of Delhi at New Delhi and interim orders have been passed in the said suit.*

*3. It is the grievance of the petitioner that the day to day functioning of the YMCA College of Physical Education, Nandanam is being disrupted by the counter party and the orders of the National President, who is a former retired Chief Justice, is not allowed to be implemented under threat. Therefore, a complaint was given to the respondent police seeking for police protection on 20.06.2019. Since no action has been taken, the present petition has been filed seeking for police protection.*

*4. Heard the learned Additional Public Prosecutor appearing on behalf of the respondent police.*

*5. This Criminal Original Petition is disposed of with a direction to the 3<sup>rd</sup> respondent to immediately call the*



*parties for an enquiry and ensure that there is no unnecessary law and problem created in running the YMCA College of Physical Education, Nandanam. The parties shall be relegated to the Competent Civil Court in order to workout their remedy and no one should be permitted to create a hostile atmosphere inside the college.*”

9. On 3<sup>rd</sup> July, 2019 Dr. Abraham informed the current National President Mr. J. B. Koshy that he was being manhandled by unruly elements in the college precincts. However, on the strength of the order, he is willing to join back to duty. Ld. Senior counsel further submits that the manner in which the Principal was unceremoniously removed and attempted to be physically thrown out of the college constitutes over-reaching the orders of this Court. Reliance is placed upon letter dated 25<sup>th</sup> June, 2019 written by the Principal – Dr. Abraham to the current President of the YMCA to show the treatment meted out to him. It is further submitted that the entire attempt of Mr. Lebi Philip Mathew is to somehow take over the management of the college. It is prayed that the directions removing Dr. Abraham are null and void as the same has been passed by a Management Committee headed by Mr. Mathew, who can no longer function as the Chairman.

10. Mr. Jayant Mehta, Ld. Counsel, on the other hand contends that the relief being sought in the present application is not liable to be granted as it is in the nature of a final relief and that this Court is not seized of any dispute in respect of the Chennai college. He further relies on the minutes dated 24<sup>th</sup> June, 2019 to argue that Dr. Abraham himself was present at the said meeting. He further submits that the Madras High Court was approached for the same relief and no relief was granted. Mr. Mehta further submits that no interim mandatory injunction can be passed as a new



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Principal has been appointed.

11. The Court has heard the submissions of the parties. This Court had already reserved judgment in a number of applications in respect of the election of the President, the constitution of the National Council, etc. However, the application in the present case has been moved in view of the fact that the management of the Chennai college is being disturbed during the time when the judgment stands reserved.

12. A perusal of the Memorandum of Association clearly shows that the Chairman of the Chennai college is either the National President or the nominee of the National Board of the National Council of YMCAs. At the moment, there is no National Executive, however, the National President Mr. Koshy, who was elected on 2<sup>nd</sup> December, 2018 is currently functioning. The questions raised in respect of his election are still under consideration of this Court. The manner in which Dr. George Abraham has been removed vide order passed on 6<sup>th</sup> June, 2019 read with minutes dated 24<sup>th</sup> June, 2019 as also the complaint written by Dr. Abraham shows that all is not well in the management of the Chennai college. The order dated 4<sup>th</sup> April, 2019 was an interim order in order to make sure that no disturbance is caused in the management and running of the college during the time when this Court was seized of the disputes and further orders were passed in the reserved applications. Further, since this Court had directed that all cheques would be signed by the Principal Dr. Abraham, his unceremonious removal is quite concerning. The letter dated 2<sup>nd</sup> June, 2017, appointing Dr. Abraham as the Principal does not state that his appointment is only for a period of two years. In fact, what was required was only a letter being sent from the college to Annamalai University to extend the deputation of Dr. Abraham.





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Considering the fact that Mr. Lebi Philip Mathew is a party before this Court and is well aware of the proceedings that have taken place before this Court in the applications and the further fact that the Council itself is yet to be constituted and he is no longer the President, chairing of the Board of the Chennai college and ensuring the removal of Dr. Abraham by passing a resolution not to give a letter to Annamalai University, is completely improper. The circumstances clearly show that there is an intention to take over the management of the college and to ensure that Dr. Abraham does not continue as the Principal despite the fact that the entitlement of Mr. Lebi Philip Mathew to continue as the Chairman of the Board is itself suspect.

13. The settled legal position as per the judgments of the Supreme Court in **Kishore Kumar Khaitan v Praveen Kumar Singh (2006) 3 SCC 312** and **Samir Narayan Bhojwani v Aurora Properties and Investments & Others Civil Appeal No. 7079/2018, Decided on 21<sup>st</sup> August, 2018** is that interim mandatory injunctions though unusual, can be passed in various circumstances. The extract from **Samir Narayan Bhojwani** reads as under:

*“26. The principle expounded in this decision has been consistently followed by this Court. It is well established that an interim mandatory injunction is not a remedy that is easily granted. It is an order that is passed only in circumstances which are clear and the prima facie material clearly justify a finding that the status quo has been altered by one of the parties to the litigation and the interests of justice demanded that the status quo ante be restored by way of an interim mandatory injunction. (See Metro Marins and Another Versus Bonus Watch Co. (P) Ltd. and Others, Kishore Kumar Khaitan and Another Versus Praveen Kumar Singh and Purshottam Vishandas Raheja and Another Versus Shrichand Vishandas Raheja (Dead) through*



*LRS. and Others)”*

Thus, an interim mandatory injunction would be liable to be passed, especially to restore the *status quo ante* in a dispute.

14. In the present case, Dr. Abraham was the Principal until he was removed, *prima facie*, in an improper manner. His lien from the University was till 6<sup>th</sup> July 2019. Thus, no time has elapsed and no other person could have taken over. Article VII (3) (a) of the Memorandum of Association reads as under:

*“It shall be for the National Board:*

*...*

*(iii) to constitute Committees of Management for all the Projects of the Society,*

*(a) The Chairman of the Committee of Management/Board of Trustees of India Student Hostel, London will be the National President/Nominees of the National Board of the National Council of YMCAs of India*

*(b) The Committee of Management of College of Physical Education, Chennai will be chaired by the National President/Nominee of the National Board of the National Council of the YMCAs of India.*

In view of the above, when Mr. Mathew is no longer the President, it is extremely doubtful if he could have chaired a meeting of the College’s managing committee and take decisions in the manner sought to be done.

15. Under these circumstances, until further hearing in the application, it is directed that Dr. George Abraham shall continue to function as the Principal of the Chennai college as the minutes are clearly *prima facie*, invalid and illegal. The Defendants shall ensure that no interference is caused in the functioning of the Chennai college till further orders.



16. Reply be filed within one week. Rejoinder be filed within one week thereafter.

17. Considering the state of affairs of the Chennai College, it is directed that Mr. Lebi Philip Mathew and the current President of the Council - Mr. J. B. Koshy shall be present for considering the directions to be issued in respect of the functioning of the said college.

18. List on 30<sup>th</sup> August, 2019.

19. Order *dasti*.

**PRATHIBA M. SINGH, J.**

**JULY 08, 2019**

*Rahul*