

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

IA Nos.3-4

IN

Special Leave Petition(C)No. 26930 of 2011

C.DHARMALAINGAM

Petitioner(s)

VERSUS

SATHASIVAM & ORS.

Respondent(s)

1. I.A.3 of 2012, which has been listed for consideration today, has been filed in the Special Leave Petition, which is directed against the judgment and order dated 09/08/2011, passed by the Madurai Bench of the Madras High Court, in Rev. Application(MD) SR.No. 6729 of 2011.

2. Having heard learned counsel for the parties on the said application, we are of the view that the Special Leave Petition itself should be taken up for disposal.

3. As indicated hereinabove, the Special Leave Petition has been filed against the order passed in the Revisional Application, which was for revision of an order passed by the Division Bench of the High Court on 11th February, 2010, in Writ Appeal (MD)No.715 of 2009 and M.P.(M.D)No.1 of 2009.

4. By the said order, the Writ Appeal was disposed of on consent with the following directions:-

"(i) We request Mr.Justice P.Shanmugam, Retired High Court Judge, to preside over, as an observer, at the Extraordinary General Body Meeting to be held on 7th March, 2010 and ensure that the decisions are properly taken and in accordance with law.

(ii) Mr. V.Sitaranjan Das, Advocate Commissioner, shall also be present at the meeting to assist the learned Judge.

(iii) The Agenda in the Extraordinary General Body Meeting is only to elect/nominate the Election Committee and to fix the date of election and venue of election.

(iv) The Advocate Commissioner shall effect publication in "Daily Thanthi", immediately, so that the members have 21 days notice. The venue of the election will be Sourashtra Boys Higher Secondary School, Kamaraj Salai, Madurai. The time will be at 11.00 a.m.on 07.03.2010.

(v) The appellant and the respondents will each submit five names of members, who are either Doctors, Lawyers or Engineers or Professors and out of the 10 names, the learned Judge shall, by drawing lots, pick-out five names who shall form Election Committee.

(vi) The Election Committee shall then announce at the Meeting to be held on the 7th March, 2010 the date of election.

(vii) The Advocate Commissioner may also request the assistance of Police to ensure that no untoward

incident takes place at the meeting on 07.03.2010.

(viii) With regard to the genuineness of the members, the Advocate Commissioner as well as the Election Committee shall accept identity card which shows that the holder is a Life Member, PAN Card, Driving Licence, Voters ID or Passport, all of which will contain photographs of the voters satisfy themselves regarding the identity and ensure that their names tally with the list of voters which is with the Advocate Commissioner. The signatures of the members should be obtained.

(ix) The Advocate Commissioner is already having the list of voters, since he had conducted the election pursuant to the order of the learned Single Judge and that list will be the basis on which the election will be conducted.

(x) The Advocate Commissioner will also assist the Election Committee until the election is over.

(xi) Any suit or proceedings filed to challenge the announcement of election/election pursuant to this order shall be filed only before the Principal Sub-Court, Madurai. This direction is given so that there will not be multifarious proceedings in various courts and since the Registered Office of the 3rd respondent Sabai is also within the jurisdiction of the said Court.

(xii) Since this order is passed by consent, no injunction granted by any civil court will stop either the convening of the Extraordinary General Body Meeting or the conduct of election on the date decided by the Election Committee pursuant to these directions.

(xiii) The Ballot Boxes containing polled ballot papers and now kept in the custody of the Registrar shall be emptied by the Registrar, who will ensure that they are all destroyed. The empty ballot boxes, along with other two boxes containing records and one bag containing keys, will be returned to the Advocate Commissioner. The unused ballot papers, which are with the Advocate Commissioner, are also permitted to be destroyed.

(xiv) It is needless to say that in view of the above consent order, the suits, namely O.S.Nos.602, 633 and 683 of 2008 on the file of Sub-Court, Madurai, O.S.Nos.878, 1063 and 1103 of 2008 on the file of District Munsif, Madurai and O.S.No.435 of 2008 on the file of Sub-Court, Nagercoil, filed in respect of the elections allegedly taken place on 16.10.2008 and thereafter, have become infructuous. But, however, the parties shall withdraw the suits from the respective courts.

(xv) All the expenditure for the conduct of the General Body Meeting, Election as well as the publication and all expenses incurred by the Advocate Commissioner in this regard will be borne by the 3rd respondent Sabai.

(xvi) It appears that the amounts of the Sabai at Tamil Nadu Mercantile Bank, Main Branch, Nagercoil, in A/c.Nos.004677 and 008727, have been frozen to an extent of Rs.40 lakhs. The Bank will permit withdrawal of the amount to pay to the Advocate Commissioner for the expenses of conducting General Body Meeting, which will be certified by the Advocate Commissioner.

(xvii) Learned Advocate Commissioner submits that apart from the initial remuneration paid, his final remuneration has not been paid to him for the work done pursuant to the order in the writ petition and that three Advocates by name (i)Mr.V.Nagarajan; (ii)Mr.A.Kesavan and (iii) Mr. S.Arunkumar have also

assisted him. A sum of Rs.50,000/- (Rupees fifty thousand) to the Advocate Commissioner and Rs.10,000/- (Rupees ten thousand) each to the three Advocates who assisted the Advocate Commissioner will be paid by the Sabai.

(xviii) We fix as remuneration a sum of Rs.50,000/- (Rupees fifty thousand) to be paid to the learned High Court Judge, apart from travel, boarding and lodging expenses. Apart from what is stated in Clause (xvii) above, we fix as initial remuneration Rs.25,000/- (Rupees twenty five thousand) for the Advocate Commissioner."

5. In terms of the said order, one V.Sitaranjan Das, was appointed as the Advocate Commissioner, to oversee the elections.

6. However, the said order could not be worked out and as a result, the Review Petition was filed, which was again disposed of with the following directions:

"(i) In so far as choosing of the election office at P.R. Muthusamy Nadar Mansion, we are informed that it belongs to and forms part of the 3rd respondent/ Sangam and there cannot be any objection for having the said place, for the purpose of conducting election. Accordingly, we accept the said suggestion for shifting the office, for the purpose of conducting election to the aforesaid P.R. Muthusamy Nadar mansion from the registered office of the 3rd respondent/sangam.

(ii) The election shall be conducted in the month of November 2011 as per the schedule given by the learned Advocate Commissioner, which is as follows:

THE SCHEDULE OF ELECTION TO EXECUTIVE COMMITTEE

- 1.Date of filing Nomination 27.10.2011 to 29.10.2011
(11 A.M. to 4.00 P.M.)
- 2.Date of submission 03.11.2011 to 04.11.2011
(11 A.M. to 4.00 P.M.)
- 3.Date of review 05.11.2011 Morning at 11 A.M.
- 4.Last date for withdrawal 06.11.2011 till 4 P/M
- 5.Final list of candidate on 07.11.2011 Morning at 11A.M
- 6.Date of election and time Sunday,13.11.2011,
Morning 8 to evening 4PM
- 7.Date of counting of votes Evening at 5.30 hours
immediately after
completion of election
on 13.11.2011
- 8.Place of Election to be held Sourastra Boys Higher
Secondary School,
Kamarajar Salai, Madurai

It is needless to state that the learned Advocate Commissioner as well as the Election Committee Members shall publish the scheme in accordance with bye-law.

(iii) In so far as canvassing of voters, it is made clear that the election committee shall ensure that no canvassing is made through the magazine "Mahajanam" in any manner of publication either by way of advertisement or otherwise. However, it does not prevent the members from canvassing in any other manner without causing any hindrance and creating law and order problem.

(iv) In so far as the removal of the deceased members from the list of members, we are informed that the learned Advocate Commissioner is already having the certified copy of the list of members, which was obtained from the Registrar of Societies. The learned Advocate Commissioner is requested to effect publication in the Mahajana Sangam premises calling upon the members and others informing about the death of any of the members by giving two weeks time and on receipt of such information, the learned

Advocate Commissioner shall update the list of members, which is his possession as in the form of certified copy. The certified copy of the list of members shall be kept by the learned Advocate Commissioner and it is open to the Election Committee Members to scrutiny.

(v) In so far as the identity card to be produced for election, the order passed by the Division Bench in the Writ Appeal especially as stated in paragraph 28(viii) shall be scrupulously followed. In paragraph 28(viii) and Division Bench has observed as follows:

"28 (viii) With regard to the genuineness of the members, the Advocate shall accept identity card which shows that the holder is a Life Member, PAN Card, Driving Licence, Voters ID or Passport, all of which will contain photographs of the voters satisfy themselves regarding the identity and ensure that their names tally with the list of voters which is with the Advocate Commissioner. The signatures of the members should be obtained."

(vi) Each of the Election Committee Members shall be paid a consolidated amount of Rs. 50,000/- apart from the amount of Rs.75,000/- to be paid as a fee to the Advocate Commissioner. The said amount shall be paid from and out of the funds of the Sabai on or before 30th August, 2011.

(vii) The election which has to be completed as per the schedule by November 2011 and the elected office bearers shall take charge from November 2011 for a period of 3 years as per the bye-law.

(viii) Since it is accepted that the venue of the election need not be N.M.S.S. Vellaichamy Nadar College, Nagamalal Pudukottai and it could be conducted at Sourashtra Boys Higher Secondary School, Makarajar Salai, Madurai, in which, earlier election was conducted, we request the learned Advocate Commissioner to make necessary request to the Sourashtra Boys Higher Secondary School seeking permission for conducting election in their school as per the schedule.

(ix) The learned Advocate Commissioner shall supervise the conducting of the election by the Election Committee Members.

(x) In respect of the election to be conducted to the Sabai, no court shall entertain any suit or any proceedings, as observed in the judgment of the Division Bench in paragraph 28.

(xi)

6. With the above direction, the petition stands closed. However, it is open to the Advocate Commissioner as well as the Election Committee Members to approach this Court for any clarification by filing appropriate memo."

7. The said order was challenged in the Special Leave Petition before this Court on the ground that the consent order, which was initially passed, could not have been challenged by way of a Review Petition and the consent order could not have been altered and moulded in the manner it had been done by the High Court.

8. Having heard Mr. Giri, learned senior counsel appearing for the applicant in I.A.3 of 2012, and Mr. Dhruv Mehta, learned senior counsel appearing for the petitioners, one thing appears to be obvious that no matter what orders have been passed, it would be difficult for the elections for constituting the Executive Committee of the respondent No.4, to be held in the manner directed.

9. Accordingly, in the interest of the Nadar Mahajana Sangam Kamraj Polytechnic (R.4) and its members, and the parties concerned, we dispose of the Special Leave Petition, as also the I.A.No.3 filed therein, with the following directions:-

(I) The earlier orders relating to the choosing of the five Election Committee members and joining them with the learned

Advocate Commissioner for conducting the election, are modified.

In place of the earlier directions, we direct that the Advocate Commissioner shall himself proceed with the conducting of the elections in accordance with the Bye-Laws of the Society and in the manner provided for in the earlier order dated 11th February, 2010;

(II) We also make it clear that in case of any further difficulty, the Advocate Commissioner will always be at liberty to approach this Court, without filing a separate Special Leave Petition;

(III) All other directions regarding the release of funds or venue for conducting elections, shall remain operative;

(IV) It will also be open to the Advocate Commissioner to engage such persons, as he may consider necessary to assist him in conducting the elections in accordance with the rules.

(V) Considering the fact that the Sangam is without an Executive Committee for about the last six years, we expect the elections to be concluded within a period of three months from the date of communication of this order, in the interest of all concerned.

10. Leave is also given to the parties to these proceedings to approach this Court in connection with the holding of the elections, if such need arises.

11. The Special Leave Petition, as also the Interlocutory Application No.3 of 2012, are disposed of accordingly.

12. All other connected IAs are disposed of by virtue of this order.

13. In view of this order, the interim order passed on 23rd September, 2011, staying the impugned order of the High Court of Madras, Madurai Bench, is vacated.

14. Let a copy of this order be made available to the learned Advocate Commissioner, forthwith.

(ALTAMAS KABIR)

.....J.

(J.CHELAMESWAR)

.....J.

NEW DELHI;
September 14, 2012.

ITEM NO.38 COURT NO.2 SECTION XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

IA Nos.3-4 in
Petition(s) for Special Leave to Appeal (Civil) No(s).26930/2011

(From the judgement and order dated 09/08/2011 in REVAP No.6729/2011 of
The HIGHCOURT OF MADRAS AT MADURAI)

C.DHARMALAINGAM Petitioner(s)

VERSUS

SATHASIVAM & ORS. Respondent(s)

(for directions and exemption from filing O.T.and office report))

Date: 14/09/2012 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR
HON'BLE MR. JUSTICE J. CHELAMESWAR

For Petitioner(s) Mr. Dhruv Mehta, Sr. Adv.
& R.l in I.A. Mr. S.Beno Bencigar, Adv.
 Mr. N.Sathish Babu, Adv.
 Mr. P. Soma Sundaram, AOR

For Respondent(s) Mr. G.Sivabalamurugan, Adv.
 Mr. Anis Mohammad, Adv.
 Mr. Stalin Selvamani, Adv.
 Mr. L.K. Pandey, AOR

Petitioner in I.A. Mr. V.Giri, Sr. Adv.
 Mr. T.R.B. Siva Kumar, Adv.
 Mr. K.V. Vijayakumar, AOR

 Mr. M. Yogesh Kanna , AOR

UPON hearing counsel the Court made the following
O R D E R

In terms of the signed order, the Special Leave Petition, as also the Interlocutory Application No.3 of 2012, are disposed of. All other connected IAs are disposed of by virtue of this order.

In view of this order, the interim order passed on 23rd September, 2011, staying the impugned order of the High Court of Madras, Madurai Bench, is vacated.

Let a copy of this order be made available to the learned Advocate Commissioner, forthwith.

|(Sheetal Dhingra)
|COURT MASTER

| |(Juginder Kaur)
| |Assistant Registrar

[Signed order is placed on the file]