

O.A.Nos.250 of 2023 etc batch

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O.A.Nos.250, 249, 251, 235, 164, 236, 219, 220, 237, 221, 222 of 2023
and A.Nos.1781 & 1726 of 2023
in C.S.No.47, 55, 56 and 62 of 2023

K.KUMARESH BABU.J.,

The background upon which the Suits in which these Applications came to be filed would be relevant to be noted. I stand benefited by the judgment of the Hon'ble Apex Court in a Civil Appeal No.1392 of 2023, dated 23.02.2023, which has been extensively relied upon by the Learned Senior counsel appearing for the respective parties in these applications. The Hon'ble Apex Court in the aforesaid judgment had in detail, dealt with the reasons on which the Civil Appeal had come before the Court. The relevant paragraphs in the aforesaid judgment is extracted hereunder:-

“The matters in issue essentially relate to the internal management of a political party, All India Anna Dravida Munnetra Kazhagam, which is registered with the Election Commission of India. This political party, said to be having the primary cadre consisting of more than 1.5 crore members, has its own byelaws, which have been amended from time to time. The two upper levels of party structure include the Central Executive



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Committee and the General Council of the Central Organization. Though, in the scheme of byelaws, the topmost position in the party was earlier assigned to the General Secretary but, after the demise of the then General Secretary on 05.12.2016, the party organisation went through a sea of changes and ultimately, a system of joint leadership, by Co-ordinator and Joint Co-ordinator, was established by way of amendment of byelaws on 12.09.2017. However, the propositions for further amendments have met with divergent views of different factions within the party and have led to these litigations in as many as at least five civil suits. The prayers for temporary injunction during the pendency of these civil suits have led to different orders at different stages by the High Court of Judicature at Madras on the Original side and on the Appellate side as also by this Court.

5. For introductory purposes, we may indicate that in the first three civil suits, being CS Nos.102 of 2022, 106 of 2022 and 111 of 2022, various applications seeking interim reliefs were dealt with by an order dated 22.06.2022 whereby, the learned Single Judge of the High Court declined to grant any injunction against the meeting of the General Council scheduled to be held on 23.06.2022. This order was challenged by one of the



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plaintiffs in an intra-court appeal, OSA No.160 of 2022; and therein, by an order dated 23.06.2022, as passed after an early morning hearing, the Division Bench of the High Court, though allowed the said scheduled meeting of the General Council but, placed fetters on its scope by providing that no decision shall be taken on any other matter except 23 items of draft resolution. The said order dated 23.06.2022 came to be challenged in this Court in the three appeals arising out of Special Leave Petition (C) Nos. 11237 of 2022, 11578 of 2022 and 11579 of 2022 in this batch of matters. By way of an interim order dated 06.07.2022, this Court stayed the operation and effect of the said order dated 23.06.2022 and further to that, the next proposed meeting of the General Council slated to be held on 11.07.2022 was also permitted but while leaving it open to the parties to seek any other interim relief before the learned Single Judge dealing with the civil suits. Before the aforesaid order dated 06.07.2022 by this Court, two more civil suits, being CS Nos.118 of 2022 and 119 of 2022, came to be filed before the High Court against the said proposed meeting dated 11.07.2022. Therein again, a learned Single Judge of the High Court conducted early morning hearing on 11.07.2022 and declined the interim relief. The said meeting dated 11.07.2022 was,



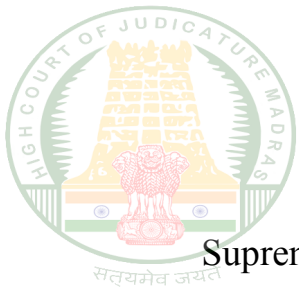
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accordingly, held at the scheduled time and various resolutions were adopted therein but, the said order dated 11.07.2022 was subjected to challenge in this Court and, by an order dated 27.09.2022, this Court remanded the matter for reconsideration. Thereafter, the interim relief applications in the said newly filed civil suits were decided by a learned Single Judge of the High Court on 17.08.2022 granting certain interim reliefs and providing, inter alia, that status quo ante, as existing on 23.06.2022, shall be maintained and there would be no Executive Council or General Council meeting without joint consent of the Coordinator and Joint Co-ordinator. The said order dated 17.08.2022 was questioned in intra-court appeals, being OSA Nos. 227 of 2022, 231 of 2022 and 232 of 2022. These three appeals were allowed by the Division Bench of the High Court by its order dated 02.09.2022, which is under challenge in the appeals arising out of Special Leave Petition (C) Nos. 15753 of 2022 and 15705-15706 of 2022.

2. In the said Special Leave Petitions, leave was granted and the same had been converted as Civil Appeal Nos.1395 of 2022 and 1396-1397 of 2022. The said Civil Appeals were disposed by the Hon'ble



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Supreme Court along with Civil Appeals No.1392 to 1394 of 2023, on 23.02.2023. The Hon'ble Apex Court while disposing of the said Civil Appeals had left open various issues to be dealt with in the pending suits, out of which the said Civil Appeals arose.

Contentions of Mr.Gurukrishna Kumar, Learned Senior Counsel for the plaintiff in CS.No.62 of 2023

3.The Learned Senior counsel would submit that the applicant is one of the permanent member of the party. He had served as Chief Minister for more than once in crisis situation. The party was formed in the year 1972 and he joined the party as a primary member as early as in the year 1977. He had held several positions in the party. He would submit that after the demise of the then Chief Minister Dr.J.Jayalalitha in the year 2016, the party had faced severe turmoils. There was serious difference of opinion between the applicant and the third respondent in the application. Proceedings were initiated before the Election Commission of India whereby an interim order was passed that neither party shall claim the symbol of the party and the party symbol was frozen. He would further submit that apart from the applicant and the



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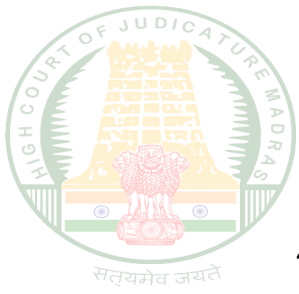
third respondent, there was a claim by another party before the Election Commission of India. An understanding was arrived at by the factions led by the applicant and the third respondent herein to jointly manage the affairs of the party. Pursuant to the said understanding, a General Council of the party was convened on 12.09.2017, and the bye-laws of the party were amended wherein the post of General Secretary was abolished and the posts of Coordinator and Joint Coordinator were established. The appointment of the Coordinator and Joint Coordinator were to be made by an election by the General Council of the party. The applicant and the third respondent herein were elected as the Coordinator and Joint Coordinator respectively. He would further submit that thereafter the applicant and third respondent herein have been managing the affairs of the party. The understanding between the factions represented by the applicant and the third respondent were placed before the Election Commission of India and thereafter it had passed orders de-freezing the symbol. This was challenged before the Hon'ble High Court in Delhi in various writ petitions. A Division Bench of the Hon'ble High Court of Delhi, had dismissed the said writ Petitions. While disposing of the said Writ Petitions, the Hon'ble Division Bench had commented upon the bye-

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law whereupon the coordinator and Joint coordinator were sought to be elected only by the General Council. Hence, the Executive Committee of the party passed resolutions on 01.12.2021 to the effect that the appointment to the posts of Coordinator and Joint Coordinator will have to be made through elections by the primary members of the party. Apart from the said resolution, various other resolutions were also made by the Executive Council of the party. A Special Resolution was also passed in respect of the election to the posts of the Coordinator and the Joint Coordinator. It was also decided to implement the Special Resolution with immediate effect and to place the same before the next General Council of the party for getting its approval. He would further submit that the said resolution was forwarded to the Election Commission of India jointly by the applicant and the third respondent herein by their communication dated 05.12.2021. In the interregnum, a notification was also issued for election to the posts of Coordinator and Joint Coordinator. Pursuant to the said notification, the applicant and the third respondent were unanimously elected as Coordinator and Joint Coordinator respectively.



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4. He would further submit that the applicant and the third respondent herein had jointly called for a regular meeting of the General Council of the party on 23.06.2022, by notice dated 02.06.2022. The said notice of meeting did not specify any agenda for discussion. He would further submit that on 12.06.2022 ahead of the General Council meeting scheduled on 23.06.2022, an announcement was issued by the head office inviting party head office bearers and District Secretaries to attend a consultative committee meeting at the party head quarters on 14.06.2022. The said meeting was also held as scheduled. After the scheduled meeting, one of the General Council member had given a press meet claiming that there is a demand for a single leadership from few of the District Secretaries. This claim was not supported by the head quarters' news bulletin issued by the party. It came to the knowledge of the applicant that the third respondent herein has been unilaterally trying to introduce an agenda in the General Council Meeting for election of a single leader. He would submit that such an unilateral decision is contrary to the prevailing bye-laws, viz., that any agenda that has to be placed before the General Council has to be jointly approved by the Coordinator and Joint Coordinator. By letter dated 19.06.2022, addressed



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to the third respondent herein, the applicant had made a suggestion to postpone the General Council Meeting to be held on 23.06.2022, *inter alia* highlighting various concerns that had cropped up. The said request was rejected by the third respondent herein in his letter dated 21.06.2022. He would further submit that the applicant by an email communication from the party head office, had received 23 draft resolutions that were proposed to be placed before the General Council. He would submit that the applicant by way of an email communication conveyed his approval for 23 draft resolutions to be placed before the General Council meeting by his email dated 22.06.2022. He would further submit that one of the party members, who was also a member of the General Council had moved this Court in C.S.No.111 of 2022 along with Applications seeking for an interim injunction in relation to the General Council Meeting to be scheduled on 23.06.2022, in which the applicant and the third respondent herein were arrayed as party defendants. The learned Single Judge of this Court had declined to pass any interim order, but had issued notice returnable by 11.07.2022. Being aggrieved against the refusal to grant interim order, the said member has moved Intra Court Appeal in OSA.No.160 of 2022. The Hon'ble Division Bench of this Court, after

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hearing the respective parties, had permitted the convening of the General Council Meeting, but however directed that no decision shall be taken on the 23 draft resolutions, and also permitted the members of the General Council to discuss any other matter, but however no decision should be taken in the General Council.

5. He would further submit that there was commotion in the General Council Meeting and the applicant was shocked to receive a book containing 23 resolutions which were different from the draft resolutions approved by the applicant. One of the members of the General Council sought to reject all the 23 items and without any debate all the resolutions were rejected, contrary to the orders passed by the Hon'ble Division Bench. He would further submit that the General Council had illegally appointed Mr.Tamil Magan Hussain to the post of Permanent Presidium Chairman. Slogans were shouted against the applicant and his supporters and bottles were thrown against them. He would further submit that the appointment of the Permanent Presidium Chairman was without the approval or consent of the applicant and the third respondent herein. He would further submit that the Presidium Chairman has orally announced



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that the next General Council Meeting will be held on 11.07.2022. Such

an announcement is without the consent of the applicant and the third respondent herein who are the Coordinator and the Joint Coordinator respectively. Hence the announcement made by the Permanent Presidium Chairman is wholly without any authority and is in violation of the bye-laws. He would further submit that a notice dated 26.06.2022 was issued by the party head quarter Secretary calling for a meeting of the Chief Executive Officers of the party to be held on 27.06.2022 and the said notice also is without the approval of the Coordinator and Joint Coordinator. This was stoutly replied by the applicant stating that such a meeting without the consent of the Coordinator and the Joint Coordinator is against the byelaws. He would further submit that being aggrieved against the order of the Hon'ble Division bench dated 23.06.2022, the third respondent herein had approached the Hon'ble Apex Court on 01.07.2022. A notice was sent to the plaintiff inviting him for a General Council Meeting to be held on 11.07.2022. The said notice was riddled with infirmities. Hence, the applicant herein filed a Civil Suit in C.S. No.118 of 2022 before this Court challenging the above said notification dated 01.07.2022. Along with the said Suit, the applicant had also filed

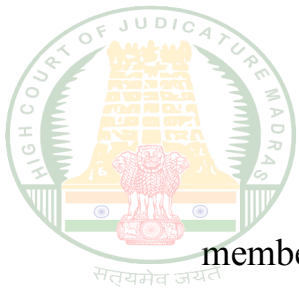
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applications seeking for an interim relief of injunction restraining the respondents from convening the General Council Meeting on 11.07.2022, or on any other date without express authorisation of both the Coordinator and Joint Coordinator. Another member of the General Council had also moved this Court in C.S.No.119 of 2022, seeking for a similar relief. On 06.07.2022 the Special Leave Petitions filed by the third respondent herein had come up for hearing before the Hon'ble Apex Court and the Hon'ble Apex Court had stayed the operation of the Hon'ble Division Bench dated 23.06.2022. Further the Hon'ble Apex Court had permitted the convening of the meeting on 11.07.2022, to be proceeded in accordance with law. It was further held that the pendency of the Special Leave petition would not be of any impediment to the learned Single Judge dealing with the Civil Suit to examine the prayer for any other interim relief and to pass any other necessary order as may be required to the facts and circumstances of the case. On 07.07.2022, the plaintiff in CS.No.119 of 2022, had moved a further application in O.A.No.379 of 2022, seeking for an additional interim injunction restraining the General Council from passing any resolution relating to the abolition of the posts of Coordinator and Joint Coordinator, as they were elected by the primary

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members of the party for a term of 5 years and also for a consequential

direction not to implement the resolutions/decisions relating to serial

Nos.3,4,5,6,7 mentioned in the notice dated 01.07.2022, in the General

Council meeting to be held on 11.07.2022. On 11.07.2022, at 9.00 am,

minutes before the start of the General Council Meeting, the learned

Single Judge of this Court pronounced orders declining the interim relief

prayed by the applicant as well as the plaintiff in C.S.No.119 of 2022.

Various resolutions were passed in the General Council Meeting which

was held on 11.07.2022. A special resolution was also passed expelling

the applicant and three other members from the various posts held by

them including the primary membership of the party. He would submit

that the resolutions had been made without any proper authority and in

violation of the bye-laws of the party. Being aggrieved against the

rejection of the interim order, the applicant had approached the Hon'ble

Apex Court directly. The said SLPs were disposed of by a common order

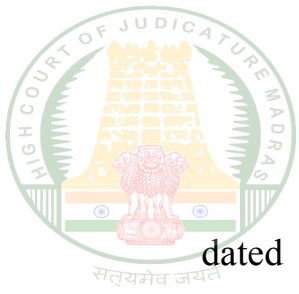
dated 29.07.2022, remanding the matter back to the learned Single judge

for fresh reconsideration. He would submit that upon remand, the learned

Single Judge of this Court by common order dated 17.08.2022, granted

various interim reliefs in favour of the applicant. The said common order

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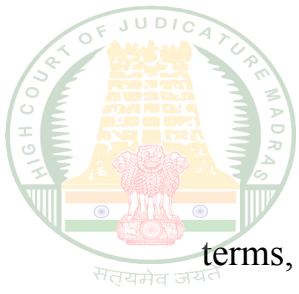
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dated 17.08.2022, was challenged by the third respondent herein in an

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Intra Court Appeal and the Hon'ble Division Bench of this Court by its order dated 02.09.2022 allowed the Intra Court Appeal by setting aside the common order dated 17.08.2022, passed by the learned Single Judge. The order of the Division Bench dated 02.09.2022, was challenged by the applicant and the plaintiff in C.S.No.119 of 2022, before the Hon'ble Apex Court and an undertaking was given by the third respondent herein and recorded by the Hon'ble Apex Court in its order dated 30.09.2022, that there shall be no election to the post of General Secretary pending the Special Leave petitions. The SLPs filed by the applicant against the order dated 02.09.2022 were taken up along with the SLPs filed by the third respondent against the order dated 23.06.2022. By a judgment dated 23.02.2023, the Honble Apex Court upheld the order of the Division Bench dated 02.09.2022 and made absolute the interim order dated 06.07.2022. He would submit that even though the Hon'ble Apex Court had affirmed the order passed by the Division Bench, it had held that all the issues raised in the SLPs are left open to be agitated at the proper time.

6. He would further submit that the Hon'ble Apex Court, in clear



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terms, has recorded that it has not gone into the validity of the resolutions

passed on 11.07.2022. Since the resolutions, especially resolution

Nos.3,4,5,6, and the Special Resolution passed on 11.07.2022, are

contrary to the bye-laws prevailing at that point of time and also that the

special resolution was made without any authority under the bye-law, the

applicant had preferred the present Suit challenging the said resolutions.

He would further submit that the first respondent herein had issued a

notice on 17.03.2023, notifying the election to the post of General

Secretary. He would submit that when the resolutions abolishing the

posts of Coordinator and Joint Coordinator and the recreation of the post

of General Secretary were sub-judice in Civil Suit filed by the three

expelled members, the notification of election to the post of General

Secretary was trying to over reach the judicial process and hence the same

was also challenged by him.

7. The Learned Senior Counsel would submit that the party

structure is akin to the presidential system vesting extraordinary power to

the General Secretary. The post of General Secretary was replaced by the

posts of Coordinator and Joint Coordinator. The Coordinator and the



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Joint Coordinator were vested with various powers including the power to

convene the General Council Meeting, Executive Council Meeting and

also the powers to relax the rules and regulations of the party. He would

submit that the Coordinator and Joint Coordinator jointly convened the

General Council Meeting on 23.06.2022. On the meeting held on

23.06.2022, a Permanent Presidium Chairman was appointed without the

approval of the Coordinator and Joint Coordinator. The said person had

announced that a General Council Meeting will be held on 11.07.2022.

The said announcement was also not with the approval of the Coordinator

and Joint Coordinator. He would also submit that the resolutions that

were sought to be taken up for discussion on the meeting dated

11.07.2022 was also not approved by the Coordinator and Joint

Coordinator. In that context, he would submit that the resolution that

were adopted on 11.07.2022 were illegal as being without any authority,

arbitrary and in violation of the basic bye-laws of the party. He would

submit in particular, that in resolution No.3, the abolition of the posts of

Coordinator and the Joint Coordinator based on the presumption that the

said posts have lapsed in view of the fact that the same has not been

approved in the General Council Meeting held on 23.06.2022 is a fallacy.



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He would further submit that the Division Bench of this Court in its order dated 02.09.2022, had specifically held that the issue of 'lapse' will have to be kept open and decided in the pending suits. The said finding of the Division Bench has been affirmed by the Hon'ble Apex Court in its judgment dated 23.02.2023. In the light of the said conclusive pronouncement, the resolution No.3 should not be implemented and therefore, he would seek that the respondent should be enjoined from implementing the said resolution. In the light of the said submission, he would further submit that the further resolutions, namely, the resolution to appoint an Interim General Secretary and the resolution to appoint the Election Committee to conduct the election of the General Secretary and for recreation of the post of General Secretary are all vitiated. He would submit that when it has been held that the question of lapse of posts of Coordinator and Joint Coordinator was left open to be decided in the Suits filed by the applicant and one another General Council member, it is axiomatic that the said resolutions will have to be kept in abeyance and the posts of Coordinator and the Joint Coordinator will have to be continued. He would submit that the third respondent herein had chosen not to act as a Joint Coordinator on a presumption that the posts of

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Coordinator and Joint Coordinator had lapsed. When that be the position,

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steps should have to be taken to fill up the vacant post of the Joint Coordinator. Without doing so, the office bearers of the party head quarters without any authority had issued the notice dated 01.07.2022, to call for a General Council Meeting on 11.07.2022.

8. He would further submit that when a conscious decision has been taken by the General Council to abolish the post of General Secretary, as it was the sentiment of the primary members of the party that no one would be eligible to hold the post of the General Secretary that has been held by the founder of the party that is Puratchi Thalaivar Dr.MGR and the former Chief Minister Puratchi Thalaivi Dr.J.Jayalalitha. He would submit that the revival of the post of General Secretary at the instance of the third respondent herein would only show that he has no respect to the leaders of the party or the sentiments of the primary members of the party. He would submit that the decision to abolish the post of General Secretary was taken after a detailed discussion. It was an unanimous decision of all the members to recognize Puratchi Thalaivi Dr.J.Jayalalitha, as an Eternal General Secretary of the party. This forms the basic structure of the party at present. Hence, the said resolution



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No.3, seeking to abolish the posts of Coordinator and Joint Coordinator

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and to recreate the post of General Secretary that too without any discussion on any agenda is arbitrary and is a colourable exercise of the powers of the General Council at the instance of the third respondent.

He would further submit that when the resolution No.3 is *prima facie* illegal and *ultra vires* the bye-laws, the resolution Nos.4, 5 & 6 are also equally bad. In that context, he would rely upon the judgment of this Court in the case of ***Prasanna Venkatesa Rao vs. K.Srinivasa Rao*** reported in ***(1931) 33 LW 113 (Mad)*** and submit that it is not open to the majority to alter the fundamental principles of the party and destroy the basic structure on which the parties stand. He would further rely upon the judgment in the case of ***Inderpal Singh Versus Avtar Singh & Ors*** reported in ***2007 SCC online Rajasthan 535***, and would submit that no action can be made in contravention to the bye-laws, as the same would encourage illegal action. He would also further rely upon the judgment of the Hon'ble Apex Court reported in the case of ***Ravi Yashwanth Bhoir vs. District Collector Raigod & Ors.***, reported in ***(2012) 4 SCC page 407*** and would contend that in a democratic institution like that of the first respondent, the incumbent is entitled to hold the office till the term



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for which he was elected. He would submit that in the present case, the applicant was elected as Coordinator in the election held on 06.12.2021 and he is entitled to hold the office till 2026. Any intrusion in the vested right of the applicant by impugned resolutions should be held to be not valid in law. He would further submit that as per Section 29A of the Representation of Peoples Act 1951, any amendments made in the Memorandum of association/bye-laws by a political party will have to be placed before the Election Commission of India and on receipt of such amendment, if the Election Commission approves the said bye-laws, it will publish it in its website. Only then it is deemed that such amendment have come into force to be implemented. In the present case, he would submit that the impugned resolutions by which amendment was carried out in the bye-laws were not published in the website of Election Commission of India and the Election Commission of India in its affidavit has affirmed that the same has not been published in its website owing to the various litigations pending. Hence he would submit that no one can contend that the said resolutions have been implemented.

9. The learned Senior counsel would submit that the Special



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Resolution seeking to expel the applicant and the three other members who had supported the applicant, had been made without any agenda. He would submit that the said resolution allegedly is to have been passed invoking Rule 35 of the bye-law. The Special Resolution also alleges that the applicant and others had involved themselves in various anti party activities. Drawing attention of this Court to the Rule 35 of the bye-law, he would submit that the bye-law prescribes various steps to initiate a disciplinary action against any member. Such power has been vested with the units of which the members of the party belong to and with the Coordinator and Joint Coordinator jointly. He would submit that the said bye-law also provides that the rules of natural justice to be followed, as it envisages 7 days notice to the person concerned before passing any order imposing a punishment. He would further submit that an appellate remedy has also been provided. He would submit that no power has been vested with the General Council to invoke the powers vested under Rule 35 of the bye-law. He would further submit that the Coordinator and Joint Coordinator cannot be subjected to Rule 35 of bye-law, as they are the authority who have been vested power jointly to initiate the disciplinary action and also the power of appellate authority when



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disciplinary action are initiated by the respective unit. He would submit that the order of expulsion by the General Council is without any authority whatsoever. He would further submit that the procedures prescribed under Rule 35 of the bye-law has also been not followed. No notice, as contemplated, had been issued to the applicant calling for the explanation on the allegations that were made. In that context, he would rely upon the judgment of the Allahabad High Court reported in *AIR 1962 All 439*, and would submit that the General Council being a creature of the Rules of the party, cannot perform any function that the bye-laws do not authorise it to perform. In this case, he would submit that the General Council is not authorised under Rule 35 to initiate any disciplinary proceedings. The Learned Senior counsel would submit that the applicant is an eminent member of the party raising from being a primary member to becoming a Chief Minister in the need of the hour and recognized by the eternal General Secretary of the party to hold the post of Chief Minister in her absence, would itself show how the applicant has been faithful to the ethos and values of the party. Therefore he would submit that the decision to expel the applicant from the party has been taken only to see that the third respondent herein has no opposition in the



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party and that he could have free hand to take any decision to his whims and fancies.

10. In support of his contention he would rely upon the judgment of the Hon'ble Apex Court reported in the case of *AIR 1963 SC 1144*, to contend that when a member of an association is sought to be expelled, the same should be done in good faith and not in violation or derogatory of the well laid principles of natural justice. He would also draw strength from the aforesaid judgment to submit that the relationship of a member with the association is on the basis of a contract and that his right of being a member cannot be dislodged without any rhyme or reason. He would rely upon a judgment of the Hon'ble Apex Court reported in *AIR 1963 SC 1144*, to submit that the expulsion of a member requires atleast due notice of the charges levelled, due enquiry, an opportunity to defend oneself and a decision arrived at on such an enquiry should be honest. He would further rely upon the another judgment of the Bombay High Court reported in *AIR 1939 Bombay 35* and would contend that to deprive a person as a member is certainly a very serious grave measure, that too, when he is expelled from the membership without a hearing or

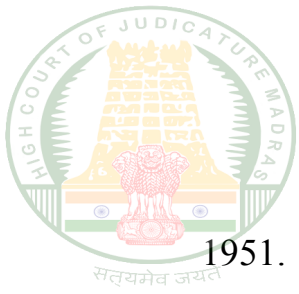


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without giving reasons. In the present case, he would submit that the expulsion by the General Council firstly is without any authority; secondly is in violation of the principles of natural justice. Hence he would submit that the applicants are entitled for a grant of injunction for all the prayers made in the Original Applications.

Submissions of Mr.Abdul Saleem, learned Senior Counsel for the plaintiff in C.S.No.47 of 2023

11. The learned Senior Counsel would submit that the applicant is a member of the party for the past 30 years. The applicant is a two-time member of the Legislative Assembly and he had also been a Member of the Parliament. He would submit that he had challenged the resolution passed by the second defendant which is being represented by a chairman. He would further submit that the second defendant who is the second respondent in this application has not chosen to file its counter. He would submit that the fourth respondent in his capacity as the Interim General Secretary has filed a counter. According to him the said counter cannot be taken on record, since the resolutions have not still been implemented, as the same is still not approved by the Election Commission of India, as mandated under the provisions of the Representation of Peoples Act,



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1951. Therefore, he would contend that the first respondent could only be represented by the Coordinator and the Joint Coordinator jointly. He would further submit that the fourth respondent had taken out an application seeking to strike out, and amend the plaint for which this applicant is it to file counter. In that context he would submit that the said application has to be taken up first and only thereafter the other applications could be heard. Learned Senior Counsel hence would submit that in the eye of law, there is no counter from the respondents.

12. Further referring to the letter addressed by the fourth respondent as a Joint Coordinator dated 28.6.2022 to the Election Commission, he would submit that the fourth respondent has on his own accord relinquished the post of Joint Coordinator on the assumption that the said post has lapsed. He would draw attention of this Court to the order of the Division Bench dated 02.09.2022 and submit that the question of lapse has been left open to be decided in the Suit. The same has also been affirmed by the Hon'ble Apex Court in its judgment dated 23.2.2023. In that context, he would submit that the posts of Coordinator and Joint Coordinator continues to exist even today and therefore the



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fourth respondent cannot claim himself to be the Interim General Secretary of the party. As regards the approval by the Election Commission of India, he would refer to the counter filed by the said authority before the Apex Court, wherein according to him, they have categorically stated that the amended bye-laws submitted pursuant to the General Council meeting held on 11.07.2022 has not been uploaded in its website due to the multiple proceedings *inter se* parties. He would also further submit that the Hon'ble Apex Court while dealing with the Civil Appeals challenging the notification dated 01.07.2022 had held that all the applications for impleadment was not found necessary to be dealt with and left it open to all such applicants to take recourse to appropriate remedy in accordance with law. Since the applicant had approached this Court, they cannot be denied to get any interim relief on the ground that they had belatedly approached the Court after a period of eight months.

13. He would contend that as regards to the special resolution expelling the applicant, no reasons whatsoever has been stated except to state that the applicant has acted contrary to the policies, rules and regulations governing the party. There is no specific statement of the



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violations committed by the applicant. The applicants are all the members

of the political party for a very long time and they all know the bye-laws

back of the hand and they would not dare to violate the bye-laws

governing the party. He would further submit that the special resolution

refers to Rule 35 of the bye-law for expelling. He would submit that there

was no notice to the applicant calling upon him to explain, indicating the

violations committed by the applicant. He would submit that Rule 35 of

the bye-law has embedded within itself, the principles of natural justice,

by mandating a notice of seven days when disciplinary action is initiated.

He would further submit that Rule 35 could be initiated only by the parent

unit or the Coordinator and Joint Coordinator jointly. In this case the

power vested under Rule 35 has been exercised by the General Council,

which is without any authority whatsoever. He would further submit that

the resolutions, 3, 4, 5 and 6 are again contrary to the wishes of the

primary members. He would rely upon the arguments made by the

learned Senior Counsel Mr.Guru Krishna Kumar on that aspect. Adding

to the said arguments, he would submit that the reason assigned, that the

wishes of the primary members are sought to be implemented by passing

a resolution is not supported by any quantifiable data. Such a data is

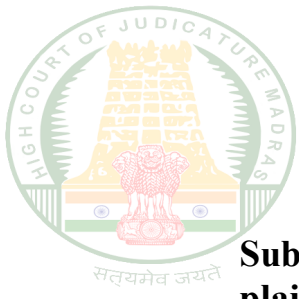
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relevant in the present case as in the General Council that was held in the year 2017, a conscious decision has been taken to abolish the post of General Secretary, as no one would be eligible to hold the post which has been held by legends.

14. He would further submit that when the applications came up for hearing on 17.03.2023, it was directed to be listed on 11.04.2023 on the understanding that the pleadings will be complete by all parties in all applications. The notification for election of the General Secretary has been made in the evening, calling for nominations to be filed before 19.03.2023. This conduct of the respondents is to over reach the judicial proceedings so as to defeat the rights of the applicants. He would further submit that the decision to appoint the fourth respondent as Interim General Secretary is not supported by any decision of the primary members as the primary members are the persons to elect the General Secretary. He would also rely upon the judgment of this Court dated 21.08.2015 in A.Nos.502 & 503 of 2015 in C.S.No.388 of 2015, to submit that the applicants are entitled for an interim protection.



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Submissions of Mr.C.Manishankar, learned Senior Counsel for the plaintiff CS.No.56 of 2023

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15. Learned Senior Counsel would submit that the core issue is whether the conduct of the meeting on 11.07.2022 itself is valid. He would submit that when the meeting itself is bad, whatever resolution which are passed are also bad.

16. According to him, bye-laws were amended on 12.09.2017. Rule 20A, provided for Coordinator and Joint Coordinator. The Coordinator and Joint Coordinator should be the primary members of party for a continuous period of 5 years. Coordinator and Joint Coordinator shall be elected by the members of the General Council. Coordinator and Joint Coordinator are responsible for the entire administration of the party. Coordinator and Joint Coordinator shall constitute the Executive Committee.

17. Relying upon Clause (vii) of 20A, he would submit if for any reason, the post of Coordinator or Joint Coordinator, becomes vacant, before the expiry of the tenure, office bearers, who were nominated by them shall continue the office till the new Coordinator is elected. The



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Joint Coordinator in this case sent a letter dated 28.06.2022 to the Election Commission stating that the post had lapsed. When that be so the General Council first should have filled up the post of Joint Coordinator and thereafter proceeded with a meeting of the General Council.

18. After Joint Coordinator relinquished his post, he becomes an ordinary member. Whatever action to be taken must be approved by Coordinator and Joint Coordinator. Whenever it is considered necessary by Coordinator and Joint Coordinator to convene a meeting, it is necessary to give 15 days prior notice, on the request of 1/5th members of the party. The plaintiff is a sitting M.L.A. and he was expelled from the party even without mentioning any of the rule of bye-law.

19. He would further submit that the stepping down by the fourth respondent on the presumption that the post has lapsed cannot be assumed that the post of Coordinator too has become vacant. He would further submit that the resolutions of the executive committee dated 01.12.2021



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had to be placed before the next General Council. Such resolutions were

not placed when the General Council was convened on 23.06.2022.

Hence, it cannot be said that the resolutions had lapsed as no decision was

taken on the resolutions made by the Executive Committee. He would

further submit that even in this case the special resolution do not spell out

any reasons and that the bye-laws have not been followed as regards the

expulsion of a member, hence the resolutions are *exfacie* illegal. He

would submit that the applicant is a sitting legislator and his expulsion

without following the due process provided under Rule 35 of the bye-law

has caused great prejudice to the applicant. Therefore, there is a *prima*

facie case made out by the applicant and that the balance of convenience

is in favour of the applicant, considering the fact he is a sitting MLA and

permitting him not to represent the party, would cause irreparable injury

which cannot be compensated, as it would only affect the public interest.

Hence, he would seek this Court to grant the injunction as prayed for.

Submissions of Mr.A.K.Sriram, learned Senior Counsel for the plaintiff in C.S.No.55 of 2023

20. Learned Senior Counsel would state that the source of special

resolution is Rule 35 of the bye-law. He would submit that the mandate of

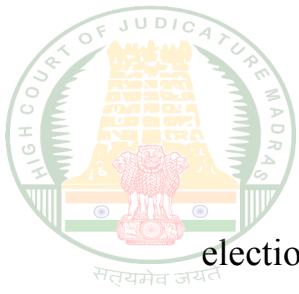
Rule 35 has not been followed. He would also reiterate the submissions



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made by the learned Senior Counsels appearing for the other applicants

that the General Council had no authority to invoke the provisions of Rule 35 of the bye-laws. He would further submit that Rule 5(7) cannot be put against any member. The said Rule according to him is a void rule. He would submit that the relationship of a member with that of the party is contractual in nature, as has been held by this Court and also by the Apex Court and submit that there can be no contract contrary to Section 28 of Indian Contract Act. He would draw attention to Section 28 of the Indian Contract Act and submit that the said bye-law is *ultravires* Section 28 and hence should not be put against the applicant. He would further submit that there is no delay in the applicant in approaching this Court by instituting the present suit, as permission has been granted by the Hon'ble Apex Court in its judgment dated 23.02.2023, for such person who are aggrieved to take recourse to the remedy available to them. He would further submit that the contention raised by the learned Senior Counsel appearing for the respondents on the last hearing that the election process had started much before the notification was issued, is without any substantive pleading in the counter filed by the fourth respondent. According to him there are no pleadings in the counter, as to when the

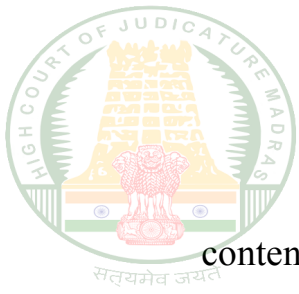


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election process has started. Hence, he would submit that balance of convenience is in favour of the applicant for grant of injunction and refusal to grant injunction would cause grave prejudice to the applicant. He would submit that in all other aspects, he will adopt the arguments made by the learned Senior counsels for the applicants in the other applications.

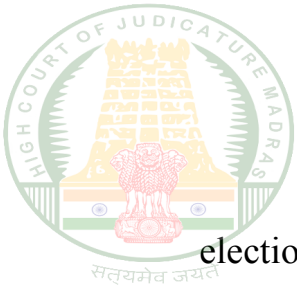
Submissions of Mr.C.S.Vaidyanathan, Learned Senior counsel appearing for D1 & D3/D4 in all suits.

21. The Learned Senior counsel would submit that on 11.07.2022, the General Council passed resolutions to conduct the elections after amending the Rules and Regulations and the convening of the meeting has been upheld by the Hon'ble Division Bench of this Court as well as the Hon'ble Apex Court. The Hon'ble Apex Court in its judgment dated 23.02.2023, has specifically dealt with on the role of the Courts in the affairs of the very political party. When the resolutions having been passed by the General Council, they have to be given effect to, as the General Council is a body with powers to amend the bye-laws. Further the Learned Senior counsel would submit that Courts ought not to interfere with the internal functioning of the party. In support of his



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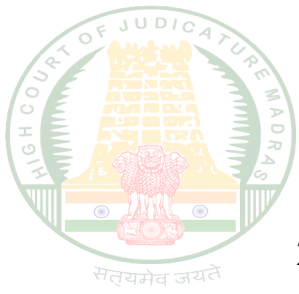
contentions, the Learned Senior counsel placed reliance on the judgment of the Hon'ble Supreme Court in the case of **SCBA vs. B.D.Kaushik** reported in **(2011) 13 SCC 774**. The Learned Senior counsel would further submit that it is undisputed fact that the majority of the members of the party wanted single leadership and it is clear in the General Council Meeting held on 11.07.2022, where out of 2665 members, 2460 members attended the meeting and voted for the resolutions. He would submit that over 2500 members filed affidavits before the Election Commission of India in July and September and 2501 members voted to choose the candidate proposed by the fourth respondent after the order of the Hon'ble Apex Court on 03.02.2023. The Learned Senior counsel would further submit that in the legislative wing of the party, out of 65 members, 61 members in the assembly and 3 out of the 5 Members of the Parliament are in favour of the resolutions. He further would submit that it is an admitted fact that there had been a deadlock in the party. The political party has to function and the functioning of the party will have to be as per the wishes of the majority members of the party and cannot be scuttled by the plaintiffs. He would submit that an election once commenced cannot be injuncted by the Courts and in the present case,



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election process was commenced on 17.03.2023 with the announcement of the schedule and the nomination is already in progress and hence cannot be injuncted. In support of his contention, the Learned Senior counsel placed reliance on the judgment of the Hon'ble Supreme Court in the case of *SCBA vs. B.D.Kaushik* reported in *(2011) 13 SCC 774*. Therefore, the Learned Senior counsel would submit that there is a *prima facie* case for conduct of the election for General Secretary.

22. The Learned Senior counsel further would submit that the General Council decided on the elections over 8 months ago which ought to be completed in four months. Since an undertaking was given that the election would not be conducted until the SLPs were decided and the SLPs having been conclusively decided, he would submit that any further delay would delay the party gaining stability, as being the primary opposition party in the State. He would submit that having made all arrangements, if there is an injunction, the same would be for the benefit of people, who are against the party and it would cause great hardship to the members of the party.



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23. The Learned Senior counsel would submit that the plaintiffs have initiated the Suit for their personal grievance in the individual capacity and it is not their claim that the suit is in representative character and in such circumstances, the interest and wishes of the plaintiffs cannot be subservient to the absolute majority in the party. He further would submit that if the election is conducted, it is not as if this Court does not have the powers to nullify the election, if there is anything so inherently wrong with the decision and process. He would submit that the observations of the Hon'ble Supreme Court in the order dated 23.02.2023 in this aspect will squarely apply to the present circumstances and the relief sought for by the plaintiffs cannot be granted.

24. The Learned Senior counsel further would submit that the plaintiffs have suppressed the fact that they have all been part of the parallel body under the third respondent and the plaintiffs are all joint coordinator or deputy coordinators appointed by the third respondent. When they are part of a parallel outfit, the plaintiffs have no locus to claim for any relief. He would submit that they are all part of the group and they attacked the party office on 11.07.2022 in broad day light and



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have not so far even apologized for their actions and therefore, the

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Learned Senior counsel would submit that suppression of material fact dis-entitles the plaintiffs to the reliefs sought for.

25. The Learned Senior counsel would further submit that it is not the party which is showing haste and the party is fulfilling the wishes of the cadre and the same is being termed 'haste'. He would submit that the allegations of over reaching the judicial process is also irrational and would submit that there is no requirement under the Representation of Peoples Act for any Approval of the bye-law or the modification made in the bye-law to be given by the Election Commission. The Election Commission will have to only ensure that the party satisfies the requirement of Section 29A(5). He would contend that if such argument is to be taken, then all that a selfish member is to do is to file a suit and claim that any act of the party is over reaching judicial process.

26. He would further submit that the timing and the interval given for the elections is the same as that of the previous elections and the nominations were on Friday and Saturday with the scrutiny on Sunday.



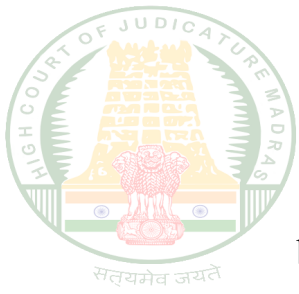
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Therefore, the claim of the time period for filing nomination is short and over the weekend is clearly unsustainable.

27. The Learned Senior counsel would submit that the irreparable injury claimed by the plaintiffs is non-existent, as they have been removed from the primary membership. In any case assuming they continue as members, it is not even pleaded that they have the necessary qualification to contest the election and therefore, if injunction is granted, the injury is to the party and its members.

28. He also relied upon various judgments to drive forth his submissions as to when an injunction could be granted.

a) The Learned Senior counsel for the respondents relying upon the decision of the Hon'ble Supreme Court in the case of *CCE vs. Dunlop India Ltd.*, reported in *1985 1 SCC 260*, would submit that the practice of granting interim order which practically give the principal relief sought in the petition for no better reason than that a *prima facie* case has been made out, without being concerned about the balance of convenience, the public interest and a host of other relevant considerations was deprecated.



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b) The Learned Senior counsel relying upon the decision of the Hon'ble Supreme Court in the case of ***Dalpat Kumar vs. Prahlad Singh***, reported in ***(1992) 1 SCC 719***, would submit that *prima facie* case by itself is not sufficient to grant injunction and the Court has to be satisfied that non-interference by the Court would result in “irreparable injury” to the party seeking relief and also “the balance of convenience” must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. Further he would submit that the grant or refusal of temporary injunction is subject to the court satisfying that, *inter alia*, the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

c) The Learned Senior counsel relying upon the decision of the Hon'ble Supreme Court in the case of ***Best Sellers Retail (India) (P) Ltd., vs. Aditya Birla Nuvo Ltd.***, reported in ***(2012) 6 SCC 792***, would submit



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that even where *prima facie* case is in favour of the plaintiff, the Court will refuse temporary injunction if the injury suffered by the plaintiff on account of refusal of temporary injunction was not irreparable.

d) The Learned Senior counsel relying upon the decision of the Hon'ble Supreme Court in the case of ***Union of India vs. Raj Grow*** reported in ***2021 SCC Online SC 420***, would submit that it is elementary in grant of interim relief, satisfaction of the Court only about existence of *prima facie* case in favour of the suitor is not enough. The other elements i.e., balance of convenience and likelihood of irreparable injury, are not of empty formality and carry their own relevance and while exercising its discretion in the matter of interim relief Court needs to weigh the risk of injustice.

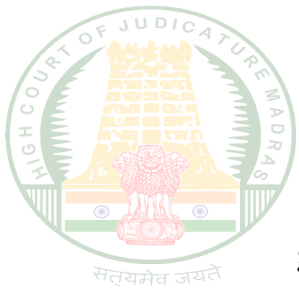
e) The Learned Senior counsel further relying upon a decision of the Hon'ble Supreme Court in the case of ***K.Palaniswamy vs. M.Shanmugam*** reported in ***2023 SCC Online SC 177***, a dispute arising out of an notice dated 01.07.2022, for convening the General Council meeting on 11.07.2022, would submit that the Hon'ble Apex Court has



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weighed the balance of convenience and the irreparable hardship in upholding the order of the Division Bench dated 02.09.2022. In the light of the aforesaid judgment he would submit that even if the Court comes to the conclusion that a prima facie case has made out then this Court has to weigh the balance of convenience and irreparable injury as regards the applicants and respondent. He would further submit that the said decision arose in the previous round of litigation between the parties in this proceedings. The Hon'ble Apex Court has held that if the injunction is allowed to be continued, it would affect the party.

f) The Learned Senior counsel relying upon the decision of the Hon'ble Supreme Court in the case of *Shyam Sel & Power Ltd. vs. Shyam Steel Industries Ltd.*, reported in (2023) 1 SCC 634, would submit that it is a settled principle of law that while considering the question of grant of interim injunction, the Courts are required to consider the three tests of *prima facie* case, balance of convenience and irreparable injury and that a decision without considering balance of convenience and irreparable injury is unsustainable.



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g) The Learned Senior counsel relying upon the decision of the Hon'ble Supreme Court in the case of ***Ajendraprasadji Narendraprasadji Pandey vs. Swami K.Narayandasji*** reported in ***(2005) 10 SCC 11***, would submit that while deciding injunction courts have to consider the cumulative factors i.e., *prima facie* case, balance of convenience and irreparable loss and definite findings have to be given on these aspects, on a *prima facie* basis.

h) The Learned Senior counsel would also rely on the decision of the Hon'ble Supreme Court in the case of ***M.Gurudas vs. Rasaranjan*** reported in ***(2006) 8 SCC 367***, & submit that while considering granting an order of injunction the Court, apart from finding out a *prima facie* case, would consider the question in regard to the balance of convenience of the parties as also irreparable injury which might be suffered by the plaintiffs if the prayer for injunction is to be refused.

29. The Learned Senior counsel would submit that there was previously an undertaking given by the fourth respondent before the Hon'ble Apex Court and the claim that the same has to be continued is completely illogical. The Hon'ble Supreme Court has decided



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conclusively on the issues and the plaintiffs cannot claim that undertaking binds the respondent forever. Such a statement is incorrect and illogical and in any case, the party cannot be stifled for selfish needs. Hence he would submit that the applicants have not made any *prima facie case*, as the resolutions were unanimously approved by the members of the General Council. Therefore, there is no question of considering irreparable injury or balance of convenience in this case.

Submissions of Mr.Vijaya Narayan, learned Senior Counsel:

30. Learned senior counsel appearing on behalf of the General Council would submit that the General Council of the party is a supreme body and has the power to amend the bye laws. In support of his contention, he had relied upon Rule 43 of the bye laws. He would also draw attention to the order of the Division Bench dated 02.09.2022, which has affirmed the supremacy of the General Council. He would submit that the 2nd part of the bye law 43, as it originally stood, was that, no amendment could be made to the bye law as regard to the election of the General Secretary by the primary members which is the basic structure of the party. Contrary to the said bye-law, as it originally stood

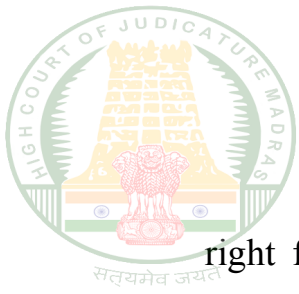


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for the first time on 12.09.2017, the 2nd part of the bye law 43 was deleted. A decision was also taken up on 12.09.2017 by the General Council to create a post of Co-ordinator and Joint Co-ordinator and amended the Rule that the election for the post of Co-ordinator and Joint Co-ordinator shall be made by the General Council, which according to him was contrary to the aforesaid basic structure.

31. He would reiterate the submissions made by Mr.C.S.Vaidiyanathan, learned Senior Council, that the relationship between the members of a party and that of a party is contractual in nature. He would submit that when that be so, the members are bound by the majority decision of the party. He would submit that the General Council members in majority had passed Resolutions on 11.07.2022 to revert back to pre 12.09.2017 stage and the applicants who are also the members of the party are bound by such a decision, as the General Council is the supreme body with power to amend the bye laws.

32. He would submit that, what was sought to be revived by way of Resolutions 3, 4, 5 and 6 are pre 12.09.2017 stage which was in vogue



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right from the date of inception of the party from 1972 for almost 47

years. The concept of Co-ordinator and Joint Co-ordinator came into being to resolve the dispute between two waring factions. As it was not conducive, various members of the General Council including the primary members of the party started to make a demand for a single leadership and to revive the pre 12.09.2017 status.

33. He would submit that when the Resolutions were passed to abolish the post of Co-ordinator and Joint Co-ordinator and bring back the post of General Secretary, certain further amendments were necessary to be made which paved way for Resolutions 4, 5 and 6. He would submit that it was the will and wish of the founder of Late Puratchi Thalaivar Dr.M.G.Ramachandran for election of General Secretary by primary members of the party. That is why, Rule 43 was made providing power to the General Council to amend any bye-laws, except the bye law in respect of the election to the post of General Secretary.

34. He would submit that the Hon'ble Apex Court *prima facie* held that the notice for convening the General Council meeting on 11.07.2022 was valid and when such a finding has been rendered *prima facie*, the



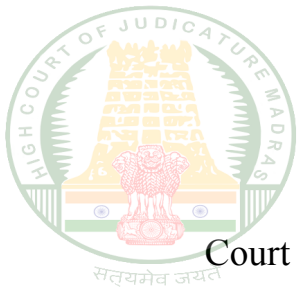
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Resolutions that were carried out in the said General Council meeting held on 11.07.2022 shall also be valid *prima facie*.

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35. He would further submit that since, the post of Co-ordinator and Joint Co-ordinator was abolished under Resolution 3 and the post of General Secretary was revived and that the post of General Secretary was to be filled up only by way of election by the primary members which could take some time, it was resolved to create a post of Interim General Secretary under Resolution No.4 and it was unanimously decided by the members of the General Council present on 11.07.2022, to elect Mr.Palanisamy as the Interim General Secretary, so that the party will not suffer without any leader. The post of Interim General Secretary was created considering the above urgent need to run the party affairs, as a leader is required to represent the party in various aspects including the general elections that is eminent for the Parliament.

36. He would strongly rely upon the judgment of the Hon'ble Apex Court in **Supreme Court Bar Association case** reported in **(2011) 13 SCC 774**. Relying upon the said judgment, he would submit that the



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Court shall not interfere with the internal affairs of a party as it would derail the functioning of the party. He would also run through the reasons given in Resolution No.3 which sought to abolish the post of Co-ordinator and Joint Co-ordinator and re-create the post of General Secretary. He would submit that the reason to abolish the aforesaid post was not only that it lapsed, but also taking into account the various demands by the large number of primary members which was reflected in the request made by the members of the General Council which includes leaders of the respective units representing the primary members. He would submit that it would not be correct to make a submission that the basic structure of the party is the authority of the Co-ordinator and the Joint Co-ordinator. In that context, he would submit that prior to 2017, there was no post of Co-ordinator and Joint Co-ordinator. After the posts of Co-ordinator and Joint Co-ordinator came into existence, there were many instances where the decisions were not able to be taken because of the difference of opinion between the Co-ordinator and Joint Co-ordinator. A large section of the primary members as well as the General Council members sought to bring back the pre 2017 stage by abolishing the post of Co-ordinator and Joint Co-ordinator. Hence, he would submit

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that there was no infirmity in passing of the Resolutions Nos.3, 4, 5 and 6

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37. Countering the arguments of the Learned Senior counsel for the applicants as regards to the contention that the General Council does not have authority to invoke Rule 35, relying upon the Rule 19(viii), he would submit that the General Council will be the supreme authority to frame policies and programmes of the party and for implementation. He would submit that as per the said Clause, the decision of the General Council is final and binding on the members of the party. He would further submit that, as per the Rule 20A (ix), the Co-ordinator and Joint Co-ordinator are empowered to take such actions as they deem fit, on important political policies considering the urgent need which cannot brook delay and await the meeting of either executive committee or the General Council of the party. He would submit that such a decision taken by the Co-ordinator and Joint Co-ordinator will have to be ratified by the General Council in the next meeting. Hence, he would submit that the power vested with the Co-ordinator and Joint Co-ordinator under Clause (xii) Rule 35 to take immediate disciplinary action by removing or



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suspending any primary member or office bearer in the interest of the party will have to be read with Clause (ix) of 20A and Clause (viii) of Rule 19 . Therefore, he would submit that the power vested under Clause (xii) of Rule 35 is not unfettered and is subject to ratification by the General Council and hence, he would submit that the claim of the applicants that the General Council does not have authority to invoke the power under Rule 35 is without any basis. Alternatively, he would submit that even according to the applicant, post of Joint Co-ordinator has fallen vacant. The Division Bench taking note of the fact, has held that in such circumstances, the Co-ordinator cannot act independently. Therefore, the General Council being the Supreme body can invoke the power under Rule 35. He would submit that it is not new that the power under Rule 35 has been invoked without any notice. He would refer to a case of a removal of one party member for indulging in any anti-party activity by the Co-ordinator and Joint Co-ordinator themselves without any notice. Further, he would submit that clause XII of Rule 35 stands on a different footing from other clauses in Rule 35. Therefore, he would submit that while the said clause is being invoked there is no necessity to serve notice as it is being invoked considering the immediate exigencies.

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38. He would further submit that due to the conduct of the then Coordinator, there was a functional dead lock in the functioning of the party. When the candidates were proposed to be nominated for the panchayat election and also for the by-elections, there was a stalemate, due to the disagreements on the name between the Coordinator and Joint Coordinator. In view of the dead lock between them, the party was not able to nominate their candidates. This was resolved by the Hon'ble Apex Court in respect of Erode by-elections in an I.A. filed by Mr. Edapadi Palanisamy.

39. He would submit that on 02.06.2022, the Coordinator and Joint Coordinator jointly issued a notice convening the General Council meeting on 23.06.2022. Since, there were some claims by the members of the general council stemming from the demands of the primary members for dispensing with the dual leadership and reviving the single leadership, expecting some unrest, an application was moved for grant of police protection to the General Council meeting to be held on 23.06.2022. Unassumingly, the same was opposed by the then Coordinator. He had



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also approached the Police Commissioner not to provide any police protection for the said meeting. In making such a claim, the then Coordinator had in categorical terms stated that the meeting should not be held. He would submit that in the said meeting on 23.06.2022, it was decided to conduct a General Council meeting on 11.07.2022 which has been *prima facie* held to be a valid meeting by the Hon'ble Apex Court in its judgment dated 23.02.2023. He had relied upon a judgment of the Hon'ble Single Judge of the Madras High Court in the case of ***Kongunadu Munnetra Kazhagam rep., by its General Secretary P.Thangavel vs. Best S.Ramasamy Former President of Kongunadu Munnetra Kazhagam CMA No.862 of 2013, dated 10.03.2014*** reported in ***LQ/MadHC/2014/908*** and submit that there is no power under the Representation of Peoples Act for any Approval of the bye-law or the modification made in the bye-law to be given by the Election Commission. The Election Commission will have to only ensure that the party satisfies the requirement of Section 29A(5) and submit that the role of the Election Commission under Section 29A (9) is only ministerial. All that the Election Commission could look into is whether it satisfies the conditions prescribed under Section 29A (5). The Election Commission

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does not have any say in the internal affairs of the party.

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40. He would also place reliance upon the judgment of this Honble Court in *Ram Kumar Aditya case*, *J.Jayachandran's case* and the judgment of the Madhya Pradesh High Court in *Shaik Saruk* case to support the above contentions.

41. He would also draw attention of this Court to the counter filed by the Election Commission before the Hon'ble Apex Court and submit the Election Commission in the affidavit had averred that it does not regulate or monitor the internal party functioning or internal elections of any political party as the same is neither envisaged under Constitution of India nor under any law. All that it requires is only to monitor whether the election to the respective posts as prescribed in the bye-laws is being conducted by the respective recognised parties. He would further submit that as per the Rule 20A(vii), if for any reason, the post of Co-ordinator and Joint Co-ordinator becomes vacant before the tenure, the office bearers who were nominated by the previous Co-ordinator and Joint Coordinator will continue to hold office and continue to function and



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exercise their powers till the new incumbents are elected and they assume office.

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42. In this context, he would submit that even if the claim of the applicants are accepted that Mr.Edapadi Palanisamy had renounced his post of Joint Coordinator on the presumption that it had lapsed and that the post of Coordinator would continue, the Coordinator cannot independently act, since clause (iv) of Rule 20 A mandates that they should act jointly. This has also been held so by the Hon'ble Division Bench in its order dated 02.09.2022.

43. Mr.G.Munuraj, learned counsel appearing for the impleading party in I.A.No.1781 of 2023 in C.S.No.47 of 2023, submitted that he wanted to implead himself as a party (5th defendant) to the Suit claiming that he is a primary member of the party AIADMK since 1985 and would submit that due to the personal dispute between the coordinator and the joint coordinator the functioning of the party is being affected. He would further submit that the elections to the various posts to the party functionaries has not been conducted and



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their term had also by efflux of time lapsed. In that scenario he seeks to appoint two retired Judges of this Court and conduct intra party elections particularly to elect the General Secretary as per the Rules and Regulations of the party.

Reply by Mr. Gurukrishna Kumar, Learned Senior counsel

44. Learned Senior counsel would submit that the judgments relied upon by the Learned Senior counsel for the respondents cannot be applied to the present facts of the case. With regard the judgments relied upon the Learned senior counsel would submit as follows:-

a) the case in ***CCE vs. Dunlop India Ltd*** (supra), related to claim of benefit of exemption from excise duty under a government notification. The interim order sought was for restraint of levy and collection of excise duty. Thus, the Learned Senior counsel submitted that this case concerning a proprietary right amenable to restitution by payment with interest at a later date.

b) the case in ***Dalpat Kumar vs. Prahlad Singh*** (supra), was a case where a party sought interim relief regarding dispossession of a



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residential house property. Therefore, the Court held that the party seeking injunction, if successful at trial, could be adequately compensated by awarding damages for use and occupation from the date of dispossession till the date of restitution. Thus, the Learned Senior counsel submitted that this case also concerning a proprietary right amenable to restitution at a later date.

c) the case is ***Best Sellers Retail (India) (P) Ltd.***, (supra), was a case where temporary injunction was sought restraining defendants from leasing, subleasing alienating or encumbering a certain premises and the Court held that though the plaintiff would suffer financial losses on refusal of temporary injunction, the same could not be said to be irreparable since such financial loss could be compensated by awarding damages at a later date. Thus this case also concerning a proprietary right amenable to restitution at a later date.

d) the case in ***Union of India*** (supra), pertained to confiscation of goods alleged to be imported into the country in violation of provisions of the Customs Act and Rules/notifications. The fact situation is so far



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removed from the activities of political parties that it can have no relevance to the case on hand.

e) the case in ***K.Palaniswamy*** (supra), relating to the judgment of the Hon'ble Supreme Court in the prior round of litigation between the parties to the present suit where the challenge was to the very convening of the General Council meeting held on 11.07.2022 and the plaintiff has conveniently ignored the paragraph 3 of the said judgment which specifically allowed all contentions to be raised as regards the validity of the resolutions passed at the said meeting in appropriate proceedings.

f) the case in ***Shyam Sel & Power Ltd.***, (supra), was relating to grant of interim relief in a suit alleging infringement of trademark and thus the injunctive relief sought for was in relation to a proprietary right. The impugned judgment in that case was set aside by the Hon'ble Supreme Court since it did not even consider the triple-test of *prima facie* case, balance of convenience and irreparable injury before granting injunctive relief. Thus, the Learned Senior counsel submitted that all of these criteria have been pleaded and demonstrated by the plaintiff and hence this precedent is also completely irrelevant to the case on hand.



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g) the case in *Ajendraprasadji Narendraprasadji Pandey* (supra), related to grant of interim relief in respect of a dispute as to who shall function as head of a religious institution and the impugned order was a combined one rejecting an application under Order 11 Rule 7 filed by the plaintiff and did not also grant injunctive relief.

h) the case in *M.Gurudas* (supra), pertained to grant of injunctive relief in relation to a partition suit pertaining to immovable property; that once again what was in issue was a proprietary right.

45. As regards to the reliance upon the judgment of the Supreme Court Bar Association case reported in *(2011) 13 SCC 774*, he would contend that the said judgment does not lay down any general principle in the conduct of election in an association of persons and that no injunction whatsoever can be granted in order to stay an election that has already been commenced. He would also submit that the said decision has not taken into consideration, the earlier larger Bench judgment of the Apex Court in *Lodge Victoria's* case reported in *AIR 1963 SC 1144*.



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WEB COPY 46. Heard the Learned Senior counsels appearing for the respective parties at length and perused the materials placed on record.

47. Various Original Applications have been filed in the four Suits seeking for identical prayers. a) O.A.No.221 of 2023 in C.S.No.56 of 2023; O.A.No.251 of 2023 in C.S.No.62 of 2023 ; O.A.No.220 of 2023 in C.S.No.55 of 2023 have been filed seeking for an ad interim injunction restraining the respondents from implementing or enforcing the resolution Nos.3,4,5 & 6 made on 11.07.2022. O.A.No.219 of 2023 in C.S.No.55 of 2023; O.A.No.222 of 2023 in C.S.No.56 of 2023; O.A.No.249 of 2023 in C.S.No.62 of 2023 have been filed seeking for an ad interim injunction to restrain the respondent from implementing/enforcing the special resolution dated 11.07.2022;

b). O.A.No.164 of 2023 in C.S.No.47 of 2023 has been filed seeking for an ad interim injunction restraining the respondent from implementing or enforcing the resolution Nos.3,4,5 & 6 and also the said resolution, dated 11.07.2022;

c) O.A.No.235 of 2023 in C.S.No.47 of 2023; O.A.No.236 of 2023



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in C.S.No.55 of 2023; O.A.No.237 of 2023 in C.S.No.56 of 2023 and

O.A.No.250 of 2023 in C.S.No.62 of 2023 have been filed seeking for an ad interim injunction restraining the respondent from conducting any election to the post of General Secretary on 26.03.2023 pursuant to the notification dated 17.03.2023.

48. The issues in these applications are segregated and shall be dealt with in the following manner:-

- a) whether the resolution Nos.3, 4, 5 & 6 dated 11.07.2022 passed in the General Council Meeting held by the second respondent are *prima facie* illegal, arbitrary;
- b) whether the Special resolution passed by the second respondent on 11.07.2022 is *prima facie* illegal, arbitrary and contrary to the bye law 35 of the first respondent; and
- c) whether the respondents are right in conducting any election to the post of General Secretary on 26.03.2023 or any other date pursuant to the notice dated 17.03.2023.

49. Before advertng to the issues, it is necessary to deal with the preliminary contentions raised by the Mr.Abdul Saleem, Learned Senior



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counsel appearing for the applicant/plaintiff in *C.S.No.47 of 2023*. He

had raised preliminary objection that the counter filed by Mr.Edapadi K.Palaniswamy claiming himself to the Interim General Secretary should not be taken on record. I do not propose to venture into the said contention since the Hon'ble Apex Court in its judgment dated 23.02.2023 had made an observation as regards the array of the parties in the litigation. It had commented that the effort on the plaintiff therein carry its own shortcoming, when it remains undeniable that the coordinator and the joint coordinator do not stand in jointness or even togetherness so as to work cohesively as a unit. The effort on the part of the plaintiff does not stand in conformity with the existing realities. For better appreciation the aforesaid paragraphs is extracted hereunder:-

34. In the passing, we may also observe that while filing the suit and seeking interim relief, the plaintiff OPS and even the other plaintiff, have arrayed the parties to the litigation in the manner that the political party- AIADMK, as also its General Council and its Central Executive Committee are said to be represented by “Co-ordinator and Joint Co-ordinator” in terms of assertions of these plaintiffs that the party and its governing/executing bodies are only to be represented by the Co-ordinator and the Joint Co-ordinator jointly. This effort on the part of the plaintiffs carries its own shortcomings when it



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remains undeniable that they i.e., OPS and EPS, the Co-ordinator and the Joint Co-ordinator respectively, do not stand in jointness or even togetherness so as to work cohesively as a unit. The effort on the part of the plaintiffs does not stand in conformity with the existing realities.

50. In view of the aforesaid observation, I am of the view that the preliminary objection raised is without any merit and is only to be rejected.

51. The issue in these applications are primarily as to whether the applicants are entitled for a grant of injunction. For granting of an injunction, the primary duty of the Court is to find out whether a *prima facie* has been made out. If a *prima facie* case is made out, then this Court has to weigh the balance of convenience and the irreparable injury that would be caused to the parties by granting of an injunction or refusal to grant an injunction. The Learned Senior counsels appearing on either side had placed very many judgments reiterating the aforesaid principle. Since the said principle is primacy for considering an injunction, seeking for an injunction, is also well settled, I do not propose to deal with those judgments.



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Issue No.(a)

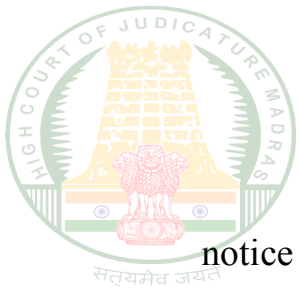
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52. The power to amend the bye-laws of the first respondent has been vested with the General Council who is the second respondent herein. The said power is traceable to Rule 43 of the bye-law and the same is extracted hereunder:-

Rule 43: Amendments

The General Council will have powers to frame, amend or delete any of the Rules of the Party Constitution.

53. It is not the claim of the applicant that the General Council does not have any authority to amend the bye-laws. The case of the applicant is that the amendment is contrary to the basic structure of the party. A contention was also raised that the notification for convening the General Council on 11.07.2022 is itself without authority and therefore, the resolutions passed in the said General Council should be held to be *prima facie* bad. I am afraid that the said contention cannot be entertained, for the fact that the Hon'ble Apex Court in its judgment dated 23.02.2023, which is extensively relied upon by the Learned Senior Counsels appearing on either side has *prima facie* held that convening of the General Council on 11.07.2022, was valid. It has been brought to the



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notice of this Court that the General Council consist of 2665 members;

2190 members have made a requisition to convene the General Council,

2460 members have attended the meeting of the General Council on

11.07.2022 and they voted in favour of the resolutions. When that be so,

primacy should be given to the decision taken in the General Council. I

have already found that there is no dispute as regards to the power of the

General Council to amend the Rules and the fact that a overwhelming

majority of the General Council had unanimously passed the resolution

on 11.07.2022, to amend the bye-laws of the first respondent, I am of the

view that *prima facie*, the resolutions passed in the General Council will

have to be valid. This finding is without prejudice to the rights of the

party to agitate the various contentions raised by them as regards to the

basic structure of the party and the contentions as regards to the sentiment

of declaring the erstwhile General Secretary as the Eternal General

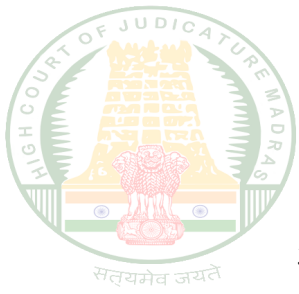
Secretary of the party. I have not discussed the judgments relied upon by

the respective Learned Senior counsels as regards to grant of injunction,

as on the facts placed before me, I am *prima facie* satisfied that

resolutions have been passed unanimously by 2460 members, out of the

2665 members, who form the General Council.



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54. The contention raised by Mr.Guru Krishnakumar, learned

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Senior counsel on behalf of one of the applicants that when the matter regarding the notification dated 01.07.2022, calling for convening the General Council was without authority as being issued by the office bearers of the party headquarters without the approval of the Coordinator and the Joint Coordinator, in my view is ill founded. The reason I come to such conclusion is the bye-law relied upon by them in clause 20A(vii). Clause 20A(vii) visualize a scenario, when the post of Coordinator and the Joint Coordinator becomes vacant before the expiry of their tenure. In such a scenario the office bearers who were nominated by the previous Coordinator and the Joint Coordinator shall hold office and continue to function till the new Coordinator and the Joint Coordinator are elected and assume office. In the present case, it has been argued by the learned Senior counsel that the office of the Joint coordinator had become vacant as the Joint coordinator had relinquished his office on the presumption that the post has lapsed, since the resolution of the Executive Committee dated 01.12.2021, was not placed before the General Council's approval on 23.06.2022. When admittedly, the post of Joint Coordinator had become vacant, the Coordinator cannot independently call for a General



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Council meeting, since as per clause (iv) of Rule 20A, the Coordinator and the Joint Coordinator should jointly discharge/perform their duties, obligations and functions. It is useful to refer to paragraph 49 of the judgment of the Hon'ble Division Bench of this Court, which is extracted hereunder:-

*49. Since the appellant-Joint Co-Ordinator, by his letter dated 28.06.2022 to the Election Commission of India, has stated that his post along with the post of Co-Ordinator had lapsed, as already stated, he cannot be compelled to continue in the said post. **That apart, the 1st respondent (in O.S.A.No.227 of 2022) alone cannot take any decision independently.** In these circumstances, we are not giving any finding with regard to the stand taken by the appellant that the posts of CoOrdinator and Joint Co-Ordinator had lapsed for want of ratification on 23.06.2022. The said issue can be decided in the pending suit.*

Even though the Division Bench had left open the claim of the appellant (Plaintiff in C.S.No.62 of 2023) on the issue of 'lapse', the Division Bench has categorically held that the Coordinator in the absence of Joint Coordinator, cannot take any decision independently. This view of the Division Bench supports my view deduced supra. Hence, *prima facie*, I do not find any infirmity in the notification dated 01.07.2022 for convening the General Council on 11.07.2022 by the office bearers of the



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party headquarters.

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55. The next contention that there is no post of an Interim General Secretary which has been resolved to be created only to benefit the Edapadi K.Palaniswamy, is again without any merit.

56. It is not disputed by the applicants that prior to 12.09.2017, the post of General Secretary was by way of election by the primary members of the party. Second part of Rule 43 also put an embargo on the General Council to amend the said bye-law. However, on 12.09.2017, a decision has been taken to delete the second part of Rule 43 and the General Council alone was authorised to elect the Coordinator and the Joint Coordinator. This was *prima facie* observed by the Division Bench of the Delhi High Court in the judgment dated 28.02.2019, in W.P.(C)No.1075 of 2017, as offending the basic structure of the party. For better appreciation the relevant paragraphs of the judgment is extracted herein below:-

50. Even assuming the same to be applicable, we find the test to be ineffectual and neutral. The crux of the allegation of the petitioners is that the post of



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the General Secretary was the heart and soul of the party including his appointment by the primary members of the party. Much reliance was placed on rule 43, which reads as under:

*"Rule-43: AMENDMENTS The General Council will have the powers to frame, amend or delete any of the Rules of the Party Constitution. But the Rule that the General Secretary should be elected only by the Primary members of the Party cannot be changed or amended since it forms the basic structure of the Party."
(Emphasis Supplied)*

51. Undoubtedly, the General Secretary is a very important position of the party. Under rule 20, the General Secretary is entrusted with the entire administration of the party. Sub-rule vi) empowers the General Secretary to convene executive and general council meetings, implement policies, conduct elections and bye-elections for the party, managing the finances, properties and the legal proceedings by the party. The General Secretary is further the final authority in all disciplinary proceedings against the party units or office bearers. Under sub-rule xii) all authorisation forms to the Commission for the allotment of the party symbol to any candidate are to be under the signature of the General Secretary. The



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General Secretary may appoint additional office bearers at any constituent units of the party. Under rule 29, the board constituted for selecting candidates for elections is also constituted by the General Secretary.

The General Secretary is also the final authority on election dispute amongst the constituent units. Rule 34 provides for the appeals of any office bearer removed after a no confidence motion to appeal to the General Secretary. The General Secretary is empowered to remove or suspend any primary members when immediate disciplinary action is necessary and also to drop such disciplinary proceedings (rule 35). The rule goes to the extent to declaring the decision of the General Secretary to be final and any approach to courts against his decision as being a ground of forfeiture of membership.

52. The respondents have amended the rules and regulations during their General Council meeting on 12.09.2017. The sum and substance of the amendment is the abolition of the post of General Secretary and declaration of Dr.J.Jayalalithaa as the eternal General Secretary of the party and the conferring of the powers of the General Secretary to the newly created posts of Coordinator and Joint-Coordinator to be elected by the General Council. Similarly, rule



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43 has been amended to remove the portion (underlined hereinbefore) declaring the elections of the General Secretary by the primary members to be unamendable. The allegation of the petitioners is that the post of the General Secretary, or the new equivalent posts, are no longer elected by the primary members, but by the General Council. There is some merit in the contention. The change in nomenclature of the posts may not amount to much, but the change of electors definitely disturbs the constitution of the party. At the same time, we find that the respondent no.6 was also elected by the petitioners at the meeting of the General Council on 29.12.2016 and till date, no elections have been conducted for the said post. Thus, the petitioners have also derogated from the very same clauses of the party constitution. The only explanation forthcoming is that the same was occasioned owing to emergent circumstances and was consistent with past practice. The contention that Dr.J. Jayalalitha was previously elected in a similar manner stands denied by the respondents no. 2 to 4. We find that rule 20 v) provides for such 'emergent' circumstance, with the office bearers appointed by the previous General Secretary to continue until the election of the new General Secretary. However, the same was not resorted to. Be that as it may, the appointment of the



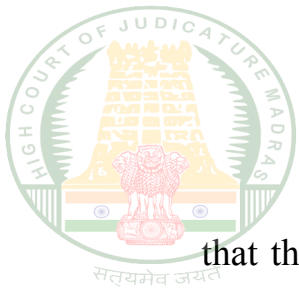
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General Secretary by the General Council and continuance of such a General Secretary for more than 2 years would inevitably constitute a serious derogation of the rule, expressly declared to be the basic structure of the party. Accordingly, both side are to be held equally guilty of not adhering to the provisions of the constitution. We clarify that the said observation is only prima facie having already held the test to be inapplicable.

57. The Division Bench had observed that the post of General Secretary had been substituted by the Coordinator and the Joint Coordinator. The change in nomenclature of the post may not amount too much, but the change of electors definitely disturbed the Constitution of the party. Taking into account the observations made by the Division Bench, the Executive Committee of the party had passed resolutions on 01.12.2021. The said resolutions in effect sought to amend the bye-laws of the party. Based upon such resolutions, elections were conducted to the post of the Coordinator and the Joint Coordinator, in which Mr.O.Paneerselvam and Edapadi K.Palaniswamy were elected as Coordinator and the Joint Coordinator respectively. The said resolutions were required to be placed before the next General Council. I am afraid



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that the resolution dated 01.12.2021 passed by the Executive Committee

is without any authority, as the power to amend the bye-law is only vested with the General Council under Rule 43 of the bye-laws.

58. I am fortified to come to such a conclusion by placing reliance of the judgment relied upon by Mr.Guru Krishnakumar, learned Senior counsel in support of his contentions that a body which is a creature of the rules of the party cannot perform any function that the bye-law do not authorize to perform. (***Raja Himanshu Dhar Singh's case- AIR 1962 All 439***). In the present case, it is an admitted fact that the resolutions on 01.12.2021, had been passed by the Executive Committee to amend the bye-laws for which it had no authority. The basic structure of the party as observed by the Hon'ble Division Bench is sought to be revived by passing a resolution in resolution No.3, to amend bye-laws in respect to the post of General Secretary, in my *prima facie* view is not without authority or is arbitrary. Since I find that the resolution No.3, *prima facie* valid, I do not propose to venture upon the issues of balance of convenience and irreparable injury.

59. As I am *prima facie* satisfied that Resolution No.3 is valid, the resolution No.4, 5 & 6 to create the post of Interim General Secretary, to



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appoint Edapadi K.Palaniswamy as Interim General Secretary and to conduct election for the post of General Secretary, in my view is also *prima facie* valid. The reason for coming to such a conclusion is that by resolution No.3, the posts of the Coordinator and the Joint Coordinator have been abolished and the post of General Secretary has been created. In view of Resolution No.3, a vacuum has been created with regard to the leadership of the party, such vacuum has to be remedied and hence Resolution No.6 appointing an Election Committee to conduct the election for the post of General Secretary will have to follow. The said resolution had slatted four months time for such Election Committee to conduct the election. In the interregnum period, the party cannot be allowed to function without a leader. Hence, *prima facie* there is also no infirmity in Resolution Nos.4,5 & 6.

60. If the contentions of the Learned Senior counsels for the applicants are to be accepted and an injunction granted, it would revive pre 11.07.2022 scenario wherein the party would have to be administered by the Coordinator and the Joint Coordinator jointly. As difference of opinion had been admittedly arisen between the Coordinator and the Joint Coordinator in their functioning, performance of the duties, there had



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arisen a functional deadlock in the affairs of the party. This has been categorically observed by the Hon'ble Apex Court in judgment dated 23.02.2023, in coming down on the findings of the order of the learned Single Judge dated 17.08.2022. The Hon'ble Apex Court in the aforesaid judgment has held that it could be drastically detrimental to the interest of the political party, which is a recognized political party with the Election Commission of India, if the order of the learned Single Judge was to remain in force till the decision of the suit. In the present case also if an injunction is granted as prayed for by the applicant, then a status quo ante would prevail upon and the same would again be not in the interest of the political party.

61. Hence, with regard to issue No.(a) I find no *prima facie* case has been made out for grant of interim injunction from implementing the resolution Nos.3,4,5 & 6 of the General Council meeting held on 11.07.2022.

Issue No.(b)

62. Rule 35 of the bye-law deals with the disciplinary proceedings to be initiated against any member of the party. For better appreciation,



the relevant clauses particularly clause iii, vi, vii, viii & xii of the Rule

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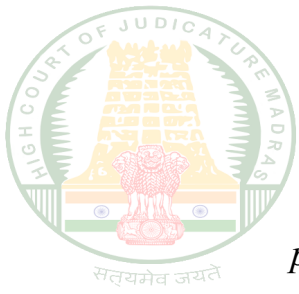
iii) when disciplinary action is taken, two-third of the members of the party unit concerned should be present.;

vi) when a disciplinary proceeding against a member or a unit is contemplated, a charge sheet should be issued spelling our charges to him or to the unit and calling for explanation within 7 days as to why disciplinary action should not be taken against him or the party unit.

vii) Disciplinary action may be taken, against a member or an office bearer of the party unit by the Executive Committee of the party unit or by the party unit next higher to it or by the Co-ordinator and Joint Co-ordinator.

viii) Disciplinary action against a party unit may be taken either by the party unit at the higher level or by the co-ordinator and joint co-ordinator.

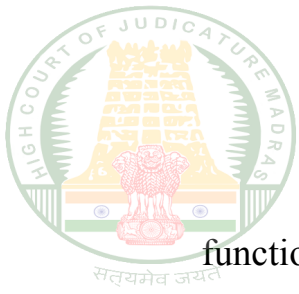
xii) If immediate disciplinary action is considered necessary, the co-ordinator and joint co-ordinator shall have power to remove or suspend any primary member or office bearer from the party. If those persons against whom such disciplinary action is taken apologies both in writing and in person before the co-ordinator and joint co-ordinator for their action the co-ordinator and joint co-ordinator shall have power to consider such apology,



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pardon them and drop such disciplinary proceedings.

WEB COPY 63. A reading of clause vii aforesaid would envisage that a disciplinary action may be taken by the Executive Committee of the party unit or by the party unit next higher to it or by the Coordinator and the Joint Coordinator. Clause 12 provides for an immediate disciplinary action by the Coordinator and the Joint Coordinator who shall have the power to remove or suspend any primary member or office bearer from the party. It has been contended by the Learned Senior counsel for the applicant that Rule 6 envisages a notice of 7 days to the person concerned by spelling out charges to enable him to submit his explanation. They would submit that the said procedure has not been followed. To support their initial contention that the General Council does not have the authority to invoke Rule 35 to initiate any disciplinary action, they drew strength from clause 7 of Rule 35. As stated supra clause 7, spells out that a disciplinary action can be taken by the Executive Committee of the party unit or by the party unit next higher to it or by the Coordinator and the Joint Coordinator. They would rely upon the judgment in ***Raja Himanshu Dhar Singh's case-*** reported in ***AIR 1962 All 439***, to contend that the General Council being a creature of rules cannot perform any



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function that the bye-law has not authorised. They also submit that no agenda regarding the same was circulated, but however the same has been introduced by way of a special resolution. They would contend that the reasons assigned in the special resolution are all generic in nature, there was no specific allegation of violation. They would also submit that there is no compelling reasons to initiate any action against the applicants. The procedure contemplated under Rule 35 could have been followed. If such a procedure had been followed, the applicants would have been in a position to submit their explanation and would have also exonerated themselves from such vexatious charges. They would submit that special resolution had been brought about only to see the applicants do not contest in any intra party election which would affect the interest of Edapadi K.Palaniswamy.

64. The Learned Senior counsel appearing on behalf of the respondents would vehemently contend that the special resolution was required to be passed considering the need of the hour. They would submit that the applicants have involved themselves in ransacking of the party headquarters on 11.07.2022, when the General Body was being



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convened . They have also hi-jacked the party headquarter by locking the premises.

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65. An argument had also been made that it was well within the power of the General Council to initiate disciplinary action against its members. It was contended that the General Council is the supreme body of the party and it has been argued that clause 12 of Rule 35 is independent of the other clauses of Rule 35. Since by resolution No.3, the post of Coordinator and the Joint Coordinator was abolished and there was no authority to invoke clause 12 of Rule 35, the General Council being the supreme body has power to take such action, since as per clause 8 of Rule 19, the decision of the General Council is final and binding on all members of the party.

66. The issue relating to the said dispute with regard to the special resolution will have to be examined during the final proceedings in the Suit. However, I am of the *prima facie* view that there has been infraction of Rule 6 which prescribes a 7 days notice before any disciplinary action.



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67. The argument of the Learned Senior counsel for the respondent that in the past expulsion without notice has been handed over by Mr.O.Paneerselvam himself will not be of any help to them. As I have found that there is a *prima facie* case, now I have to weigh the balance of convenience in favour of the parties in the applications.

68. Coming to the issue of balance of convenience, the claim of the applicants is that their rights to function as party members and contest in the elections have been taken away. They have also contended that they are the legislative members of the party representing their constituencies. Their expulsion from the primary membership of the party would affect not only their interest, but also the interest of the public at large in their respective constituencies. They would also contend that the reasons assigned by the respondents in their counter affidavit was not the reason based upon which, they have been expelled. The respondents are trying to improve upon and find out various reasons to substantiate the expulsion of the applicants. On the contrary the learned counsel for the respondent would submit that the continuance of the applicants as party members would be against the interest of the party. Apart from having

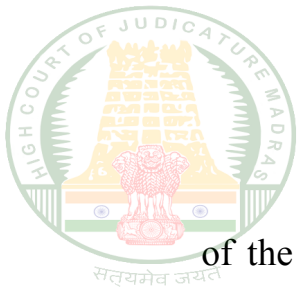


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been indulged in ransacking the party of the headquarters, they have also indulged themselves in anti party activities. They would also rely upon the judgment of the Hon'ble Apex Court dated 23.02.2023 and submit that if the applicants are allowed to continue as a party members, it would result, drastically detrimental to the interest of the party.

69. For deciding the balance of convenience, this Court has to decide as to whether a grant or refusal to grant injunction in favour of one party or other would cause irreparable injury or damage to the party. In the case on hand, the Hon'ble Apex Court had taken into account the interest of the political party concerned in deciding the factor of balance of convenience and irreparable injury. I do not find any reason to deviate from such test and hence I do not find any balance of convenience or irreparable injury in favour of the applicants to grant injunction. As regards to the claim of the applicants based upon the judgments in **Lodge Victoria's** case and **Ambalal Sarabhai's** case and other judgments is left open to them to agitate the same in the Suit.

70. Even though I find a *prima facie* case in favour of the applicants, I do not find balance of convenience tilted in their favour or that any irreparable injury could be caused to them. On the contrary, I am



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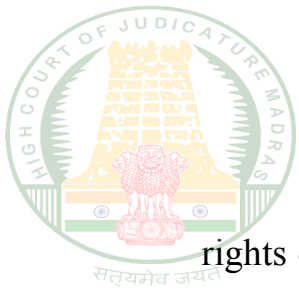
of the view that if any injunction is granted, it would cause irreparable injury to the political party concerned and hence, the injunction sought for against the special resolution will have to also be rejected.

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Issue No.(c)

71. I have already arrived at a conclusion that the applicants are not entitled for an injunction as against resolution Nos.3,4,5 & 6 dated 11.07.2022. After coming to such a conclusion and now granting an injunction to conduct the election for General Secretary would only put the political party into more trouble, as it would lead the party concerned to be without any leader.

72. The contention of the applicants that when a Division Bench of this Court and also Apex Court had not given any finding on the issue of lapse of the posts of Coordinator and the Joint Coordinator, it is assumed that the said posts exist even as on today, when such posts exist, there is no necessity to conduct election for the post of General Secretary. The further contention that if the elections are allowed to be conducted, the



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rights of the applicants in the Suit would become infructuous. I am not in agreement with the said contentions raised by the applicants.

73. As I already found that there is a *prima facie* case in favour of the respondents in amending the bye-laws and if the election to the post of General Secretary is sought to be injected, then it would affect the functioning of the political party which has been recognized by the Election Commission of India without it having a leader. Hence I do not find any *prima facie* case, balance of convenience or irreparable injury in favour of the applicants, but on the other hand, I find that the injunction as prayed for is granted, irreparable injury would be caused to the first respondent, as it would affect the functioning of the political party which has over 1.55 crores primary members in the State of Tamil Nadu.

Application in A.No.1781 of 2023

74. The applicant claims himself to be a member of the political party. He claims that due to the dispute between the two leaders of the political party, there has been unrest within the party. Therefore, he would suggest to appoint two retired Judges of the High Court to conduct the election for the post of General Secretary.



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75. From his pleadings, the statement made across the bar and also the statement in the written submission it his obvious that he is not challenging the resolutions abolishing the post of Coordinator and the Joint Coordinator and reviving the post of General Secretary, since his request is to conduct election to the post of General Secretary by nominating two retired High Court Judges. There is no averment whatsoever as to why the election committee appointed under resolution No.6, dated 11.07.2022, would not be in a position to conduct the election. When no such averment is made, I do not find any reasons as to why such a claim should be entertained. Further, with regard to the dispute *inter se* parties in the Suit and also of the fact that the suit has not been filed under representative capacity invoking the provisions of Order 1 Rule 8, there is no necessity to implead the applicant for effective disposal of the suit. Further I am of the view that the applicant is a rank interloper. In his pleadings, he has averred that even the internal elections for various posts have not been held. This pleading is contrary to the facts recorded by the Division Bench of this Court in its judgment dated 02.09.2022, wherein the Division Bench in clear terms has



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approved the elections held to various posts. (*Refer paras 34 & 35 of the judgment*). Hence, there is no merit in the application and it is liable to be rejected in *limine*.

Application in A.No.1726 of 2023

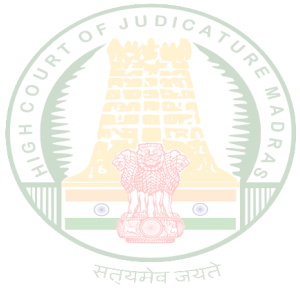
76. This application has been filed seeking to strikeout and amend the plaint. This application has been taken out by the fourth defendant in the Suit. As no counter has been filed by the respondent/plaintiff, the same is delinked from these batch of applications and the respondent/plaintiff is directed to file a counter to the said application.

77. In fine,

Application Nos.O.A.Nos.250, 249, 251, 235, 164, 236, 219, 220, 237, 221, 222 of 2023 in C.S.No.47, 55, 56 & 62 of 2023 and A.No.1781 of 2023 are rejected. However there shall be no order as to costs.

28.03.2023

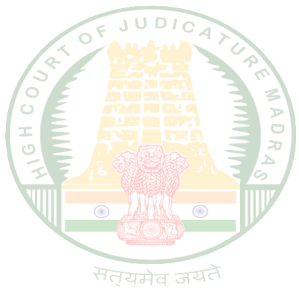
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O.A.Nos.250 of 2023 etc batch

K.KUMARESH BABU,J.

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Pre-delivery Order in

**O.A.Nos.250, 249, 251, 235, 164, 236, 219, 220,
237, 221, 222 of 2023 and A.No.1781 & 1726 of 2023
in C.S.No.47, 55, 56 and 62 of 2023**

28.03.2023