



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on : 11.08.2022

Pronounced on : 17.08.2022

CORAM:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

O.A.No.368 of 2022:-

Thiru. O.Panneerselvam,
Co-Ordinator/Treasurer, AIADMK,
Having Office at No.226,
Avvai Shanmugam Salai,
Royapettah, Chennai – 600 014.

... Applicant/Plaintiff

/versus/

1. All India Anna Dravida Munnetra Kazhagam,
Rep. by its Co-Ordinator and Joint Co-Ordinator,
Having Office at No.226, Avvai Shanmugam Salai,
Royapettah, Chennai – 600 014.
2. The General Council of the Central Organisation,
All India Anna Dravida Munnetra Kazhagam,
Rep. by its Co-Ordinator and Joint Co-Ordinator,
Having Office at No.226, Avvai Shanmugam Salai,
Royapettah, Chennai – 600 014.
3. The Central Executive Committee,
All India Anna Dravida Munnetra Kazhagam,
Rep. by its Co-Ordinator and Joint Co-Ordinator,
Having Office at No.226, Avvai Shanmugam Salai,
Royapettah, Chennai – 600 014.



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

4. A.Thamizh Magan Hussain,
Temporary Praesidium Chairman,
The General Council,
All India Anna Dravida Munnetra Kazhagam,
Rep. by its Co-Ordinator and Joint Co-Ordinator,
Having Office at No.226, Avvai Shanmugam Salai,
Royapettah, Chennai – 600 014.

5. Thiru.K.Palaniswami,
Joint Co-Ordinator/Party Head Quarter's Secretary, AIADMK,
Having Office at No.226, Avvai Shanmugam Salai,
Royapettah, Chennai – 600 014.

6. The Office Bearers of the Party Head Quarters,
Represented by Head Quarter's Secretary, AIADMK,
Thiru.K.Palaniswami,
Having Office at No.226, Avvai Shanmugam Salai,
Royapettah, Chennai – 600 014. ... Respondents/Defendants

Prayer in O.A.No.368 of 2022: Original Application has been filed under Order XIV Rule 8 of Original Side Rules read with Order XXXIX Rules 1 & 2 of C.P.C.,

1. WHY this Application should not be treated as urgent.
2. WHY this Hon'ble Court should not be pleased to pass an order of interim injunction restraining the Respondents/Defendants from convening the General Council Meeting on 11.07.2022 or on any other date without the express authorization of both the Co-ordinator and Joint Co-ordinator of the 1st respondent party should not be allowed pending disposal of the suit.
3. To what relief is the Applicant/Plaintiff entitled to.



WEB COPY



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

For Applicant : Mr.R.Gurukrishna Kumar, Senior Counsel
Asst. by Ms.P.Rajalakshmi.

For 5th Defendant : Mr.Vijay Narayan, Senior Counsel,
for Mr.K.Gowtham Kumar.

For 6th Defendant : Mr.S.R.Rajagopal,
for Mr.E.Balamurugan

O.A.Nos.370 & 379 of 2022:-

P.Vairamuthu @ Amman P.Vairamuthu,
S/o.Late S.Pitchai,
C9/8, 1st Cross Street,
Hindu Colony, Nanganallur,
Chennai – 600 061.

... Applicant/Plaintiff

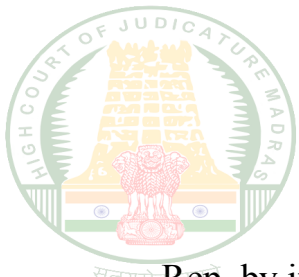
/versus/

1. All India Anna Dravida Munnetra Kazhagam,
Rep. by its Co-Ordinator and Joint Co-Ordinator,
Having Office at No.226, Avvai Shanmugam Salai,
Royapettah, Chennai – 600 014.

2. The General Council of the Central Organisation,
All India Anna Dravida Munnetra Kazhagam,
Rep. by its Co-Ordinator and Joint Co-Ordinator,
Having Office at No.226, Avvai Shanmugam Salai,
Royapettah, Chennai – 600 014.

3. The Central Executive Committee,
All India Anna Dravida Munnetra Kazhagam,
Rep. by its Co-Ordinator and Joint Co-Ordinator,
Having Office at No.226, Avvai Shanmugam Salai,
Royapettah, Chennai – 600 014.

4. A.Thamizh Magan Hussain,
Temporary Praesidium Chairman,
The General Council,
All India Anna Dravida Munnetra Kazhagam,



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

Rep. by its Co-Ordinator and Joint Co-Ordinator,
Having Office at No.226, Avvai Shanmugam Salai,
Royapettah, Chennai – 600 014.

5. Thiru.K.Palaniswami,
Joint Co-Ordinator/Party Head Quarter's Secretary, AIADMK,
Having Office at No.226, Avvai Shanmugam Salai,
Royapettah, Chennai – 600 014.

6. The Office Bearers of the Party Head Quarters,
Represented by Head Quarter's Secretary, AIADMK,
Thiru.K.Palaniswami,
Having Office at No.226, Avvai Shanmugam Salai,
Royapettah, Chennai – 600 014. ... Respondents/Defendants

Prayer in O.A.No.370 of 2022: Original Application has been filed under Order XIV Rule 8 of Original Side Rule read with Order 39 Rules 1 & 2 of C.P.C.,

1. WHY this Application should not be treated as urgent.

2. WHY this Hon'ble Court should not be pleased to pass an order of ad-interim injunction restraining the Respondents from convening the alleged General Council Meeting of the 1st respondent party which is scheduled to be held on 11.07.2022 based on an unsigned notice dated 01.07.2022 issued without giving 15 days notice in advance of the date of meeting and in violation of the bye-laws of the party pending disposal of the suit and pass such further or other orders and this Hon'ble Court may deem fit and proper in the interest of justice.

3.WHY this Hon'ble Court should not be pleased to pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

Prayer in O.A.No.379 of 2022: Original Application has been filed under Order XIV Rule 8 of Original Side Rule read with Order 39 Rules 1 & 2 of C.P.C.,

1. WHY this application should not be treated as urgent.
2. WHY this Court should not pass an order of ad-interim injunction restraining the Respondents from passing any resolution relating to the abolition of the post of Co-ordinator and Joint Co-ordinator as they were elected by the primary members of the party for the term of 5 years as per the by-law 20(A) ii, 20 A(iii) and consequentially direct the respondents from not implementing the resolutions/decisions relating to item Nos.3, 4, 5, 6 and 7 mentioned in the alleged notice dated 01.07.2022 in the alleged General Council Meeting, which is to be held on 11.07.2022 pending disposal of the suit and pass orders.
3. To pass such further or other orders as this Hon'ble Court may deem fit and necessary in the facts and circumstances of the case.

For Applicant : Mr.A.K.Sriram, Senior Counsel
for Mr.N.Pasupathi.

For 3rd Defendant : Mr.P.H.Arvind Pandian, Senior Counsel,
Asst. by Ms.P.Rajalakshmi.

For 4th Defendant : Mr.Vijay Narayan, Senior Counsel,
for Mr.K.Gowtham Kumar.

For 5th Defendant : Mrs.Narmadha Sampathi,
for Mr. P.Manoj Kumar.

COMMON ORDER



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

WEB COPY

This case is in connection with the intra-party rivalry over the question who to lead the Political Party called AIADMK.

2. The dominance of this party in the State of Tamil Nadu polity could be easily understood from the fact that it had been in power for about 30 years out of its 50 years of existence and it has also played key role in the Indian politics at National level on various occasions being part of the National Cabinet.

3. The launch of the party in the year 1972 by its founder Late M.G.Ramachandran, was almost an act of impulse. When he was expelled from DMK, (the party in which he was holding the post of Treasurer at the relevant point of time) by its General Council, his followers prompted him to start this party. Therefore in the said background, when he launched the Anna Dravida Munnetra Kazhagam (ADMK in short) on 17.10.1972, he ensured that the General Council of the party will be the Supreme body among the party organs, and the General Secretary of the party to be elected by the primary members and the General Secretary will head the party with unfettered power. The party



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

WEB COPY

Bye-Law was accordingly, drafted. Rule 20, Rule 42 and Rule 43 of the Party Constitution vested the ultimate administrative responsibility with the General Secretary, including power of exemption to the Rules and Regulations, except the mode of electing the General Secretary, which should be by the primary members of the party and Rule 43 prohibited any change or amendment to the above mode of electing the General Secretary. The Party Rule 5, entitles any person above 18 years of age who accepts the principles and objects of the Party to become a member. They members should abide by the decision of the party and shall not resort to Court of law for any reason. The primary membership is renewable once in 5 years.

4. In the year 1987 after the demise of the Founder, there was a split in the party and splinter groups functioned separately for few months . Later they joined together, regained their symbol 'TWO LEAVES” and were functioning under the leadership of Selvi J Jayalaithaa as the General Secretary of the party. In the State Assembly General Election held in year 1991, the party formed Government under the leadership of Selvi J Jayalalithaa.

5. In the next General Election held in the year 1996, the party was



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

WEB COPY

routed. Interestingly, this party 25 years ago, faced a similar turmoil as it is now undergoing. When the then Deputy General Secretary of the party Mr.S.Thirunavukkarasu convened the General Council Meeting alleging that General Secretary is inaccessible to the party men, Selvi J Jayalalithaa filed Civil Suit in this Court seeking injunction restraining Thiru. S. Thirunavukkarasu from convening the General Council Meeting.

6. The outcome of that suit and the observations made by the Division Bench of this Court in respect of certain Rules of the party constitution are relevant and binding precedent. Hence reference about it is made in the prelude itself.

7. Under Selvi J Jayalalithaa as General Secretary of this party, in the year 2011 certain amendments were made to the party constitution and it was in vogue till the demise of Selvi J Jayalalithaa (05/12/2016) and few months thereafter. The cause of action for these suits as found in the complaints had arose due to certain incidents and changes made in the party constitution on 12/09/2017 and on 01/12/2021.

8. Since, the dispute in these two suits and the Interlocutory



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

WEB COPY

Applications filed alleging violation of the procedures laid in the Party Constitution for convening the General Council Meeting, it is essential to understand the Rules for convening the General Council Meeting of the “*All India Anna Dravida Munnetra Kazhagam*”. Therefore, the relevant Rules in the Party Constitution as amended on 30.12.2011 and the changes made thereafter, on 12.09.2017, are annexed to this order and for easy reference extracted in the order itself if necessary.

9. The dispute and relief sought:-

Prayers in both suit as well as in the Original Applications are referred as below:-

C.S.No.118 of 2022:- This Civil suit is filed by one Thiru.O.Panneerselvam, who is an M.L.A representing the said Party and also holding the post of Co-ordinator/Treasurer of the Party, hence the prayer in this suit is as below:-

“a). For a Declaration that convening the General Council Meeting on 11.07.2022 or on any other date, without the joint authorization of both Co-Ordinator and Joint Co-Ordinator is illegal, and in contravention to the bye laws of the 1st Defendant Party, more particularly rule 20A(iv) and 20A(v) of the rules and regulations of AIADMK Party.



WEB COPY



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

- b). For a Permanent Injunction restraining the Defendants from convening the General Council Meeting on 11.07.2022 or on any other date without the express authorization of both the Co-ordinator and Joint Co-ordinator
- c). the Costs; and
- d). And to pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Along with the suit in C.S.No.118 of 2022, the plaintiff/Thiru.O.Panneerselvam has filed an Original Application No.368 of 2022 and the relief sought in the said application, reads as below:-

“this Hon'ble Court be pleased to pass an order of interim injunction restraining the Respondents/Defendants from convening the General Council Meeting on 11.07.2022 or on any other date without the express authorization of both the Co-ordinator and Joint Co-ordinator of the 1st respondent party”

C.S.No.119 of 2022:- This suit is filed by one Thiru.P.Vairamuthu (a)



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

Amman Vairamuthu, the prayer in the suit which reads as below:-
WEB COPY

“a). For a Permanent Injunction restraining the defendants from convening the General Council Meeting on 11.07.2022 or on any other date, without the express authorisation of both Co-Ordinator and Joint Co-Ordinator.

b). For a Permanent Injunction restraining the Defendants or any other office bearer of the Party to convene the General Council Meeting on 11.07.2022 or on any other dated without giving its members, a 15 days' notice in advance as contemplated in the rules of the 1st defendant party.

c). the Costs; and

d). And to pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Along with the suit in C.S.No.119 of 2022, the plaintiff/P.Vaiaramuthu (a) Amman P.Vairamuthu has filed an Original Applications in O.A.Nos.370 & 379 of 2022, with the following relief:-



WEB COPY



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

O.A.No. 370 of 2022:-

“This Hon'ble Court be pleased to pass an order of ad-interim injunction restraining the Respondents from convening the alleged General Council Meeting of the 1st respondent party which is scheduled to be held on 11.07.2022 based on an unsigned notice dated 01.07.2022 issued without giving 15 days notice in advance of the date of meeting and in violation of the bye-laws of the party pending disposal of the suit and pass such further or other orders and this Hon'ble Court may deem fit and proper in the interest of justice”

O.A.No.379 of 2022:-

To pass an order of ad-interim injunction restraining the Respondents from passing any resolution relating to the abolition of the post of Co-ordinator and Joint Co-ordinator as they were elected by the primary members of the party for the term of 5 years as per the by-law 20(A)(ii) and 20 A(iii); and consequentially direct the respondents from not implementing the resolutions/decisions relating to item Nos.3, 4, 5, 6 and 7 mentioned in the alleged notice dated 01.07.2022 in the alleged General Council Meeting, which is to be held on 11.07.2022 pending disposal of the suit and



WEB COPY



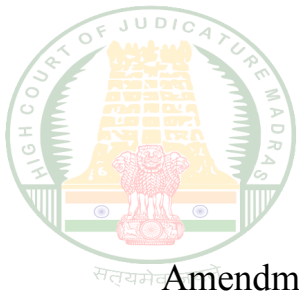
O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

pass orders.

To pass such further or other orders as this Hon'ble Court may deem fit and necessary in the facts and circumstances of the case”.

10. Mr.Gurukrishna Kumar, the Learned Senior counsel, Mr.P.H.Arvind Pandian, Learned Senior Counsel and Mr.A.K.Sriram Learned Counsel all appearing for the applicants/plaintiffs plead that the notice for the Meeting held on 11.07.2022 is *non-est* in law for having been convened by persons without authority to do so under Rule 19(vii) and 20A(viii) of the Party Constitution.

11. The case of the plaintiffs is that the General Council Meeting dated 11.07.2022 was not convene by the Coordinator and Joint Coordinator jointly. An unsigned invitation dated 01.07.2022 by unspecified Body who has no right traceable to the byelaws cannot be considered as a valid notice for General Council Meeting. The post of Coordinator and Joint Coordinator held by Mr.O.Panneerselvam and Mr.E.Palaniswami respectively cannot be termed as vacant or lapse or expired by efflux of time. On 01.12.2021, the Executive Council Meeting of the Party was held in which resolution in respect of the

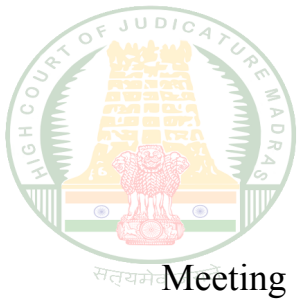


O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

WEB COPY

Amendment to the Party Constitution Rule 20 (ii), Rule 43 and Rule 45 was approved. The Election notification for the Post of Coordinator and Joint Coordinator by single vote was issued. There was no other nomination received except from Thiru.O.Panneerselvam(plaintiff in CS 118/2022) for the post of Coordinator and Mr.Eddapadi K.Palaniswamy (5th defendant) for the post of Joint Co-ordinator. Hence, they were declared as Co-ordinator and Joint Co-ordinator elected unopposed on 04.12.2021. Their term of Office is 5 years, that is upto 03/12/2026. Thereafter, the Election for the others Organs of the party including the General Council was held. After completing the party organ election, same was intimated to the Election Commission of India as mandated under the Representation of People Act, 1951 and the Rules framed thereunder.

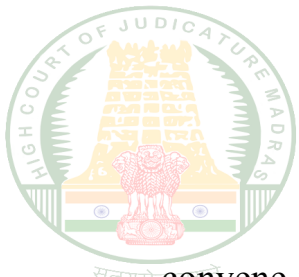
12. The plaintiff and the 5th defendant as Coordinator and Joint Coordinator of the Party, *vide* letter dated 02.06.2022 jointly communicated to the Executive Council Members and the General Council Members that there will be Executive Council Meeting and General Council Meeting on 23.06.2022 presided by the temporary Presidium Chairman Mr.A.Thamizl Magan Hussain. When the draft resolutions for the said Executive Council



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

WEB COPY

Meeting and the General Council Meeting came for the approval of the Co-ordinator, (Plaintiff in C.S.No.118 of 2022), he consented for placing the draft resolutions Nos.1 to 23 for consideration in the proposed Executive Council Meeting and the General Council Meeting. However, when a new demand in respect of the Single Leadership was engineered among a Section of party workers, there was restlessness among the party cadres leading to unwanted division and speculation. In the said circumstances, one of the General Council Member approached the High Court seeking a restrain order of the proposed Executing Council Meeting and General Council Meeting scheduled on 23.06.2022. In the said suit C.S.No.111 of 2022 while Single Judge declined to grant injunction, the Division Bench of this Court on intra Court Appeal permitted the General Council Meeting with certain restrictions. Particularly, there was no restriction to decide the 23 draft resolutions approved by the Coordinator and Joint Coordinator. However, restriction was imposed to decide any new resolution. At the same time, discussing any other matter apart from 23 items mentioned in the draft resolutions without taking decision was permitted. With the said restriction when the General Council Meeting held on 23.06.2022, the 4th respondent Mr.A.Thamizh Magan Hussain, was announced as Permanent Presidium Chairman. Letter of requestion from 2190 members to



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

convene the General Council Meeting received and 11/07/2022 as the date for
the next General Council Meeting was announced.

WEB COPY

13. According to the Counsels appearing for the applicants/plaintiffs,

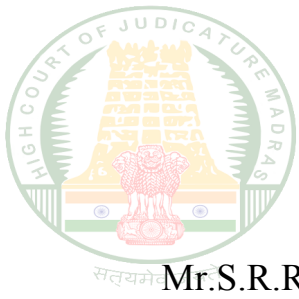
Firstly, the so-called appointment of Mr.A.Thamizh Magan Hussain as Presidium Chairman of the Party in the Meeting held on 23.06.2022 is illegal and against the restraint order passed by the Division Bench of this Court on 23.06.2022.

Secondly, the so-called representation given by the General Council Members to convene the General Council Meeting on 11.07.2022 was addressed to Mr.A.Thamizh Magan Hussain and not to the Coordinator and Joint Coordinator as required under the Party Constitution. Therefore, it is to be considered as an invalid requestion.

Thirdly, based on the invalid representation, the Meeting convened on 11.07.2022 is illegal and ultra vires to the Constitution of the Party.

Fourthly, the notice dated 01.07.2022 for the General Council Meeting dated 11.07.2022 is *ex facie void* since it does not satisfy 15 days advance notice contemplated under Rule 19(vii).

14. Per contra, Mr.Vijay Narayan Learned Senior Counsel,



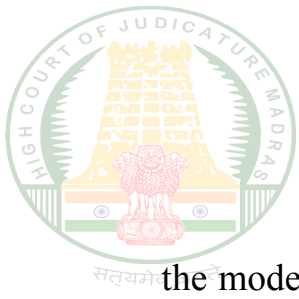
O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

Mr.S.R.Rajagopal and Mrs.Narmadha Sampath Learned Counsels appearing for

WEB COPY

the respondents/defendants primarily questions the maintainability of the suit and the interim relief sought by the applicant.

15.It is contended that the plaintiff in C.S.No.118 of 2022 sues himself by arraying him as the representative of defendants 1, 2 and 3 in the capacity as the Coordinator of the Party. One cannot sue and be sued in the same suit. Therefore, the suit suffers fraudulent joinder of Party. To maintain the suit, there must be a cause of action. Whereas in the plaint, it is stated that one of the cause of action for the suit arose on 26.06.2022 when the letter inviting the member of the party without the consent of the Coordinator and the Joint Coordinator issued. Whereas, on the said date, the post of Coordinator and the Joint Coordinator got lapsed since the amendment to the bye-laws pertaining to the mode of election of Coordinator and the Joint Coordinator was not approved by the General Council in the Meeting held on 23.06.2022. Contending that on 01.12.2021, when the Executive Council met it was resolved to place the amendment to the Rules 20 A (ii), 43 and 45 for approval of the General Council in the ensuing Meeting. However, when General Council Meet on 23.06.2022, the amendment were not approved. Therefore,



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

WEB COPY

the mode of election for post of Coordinator and the Joint Coordinator brought in by way of amendment to the bye laws not approved, hence the post got lapsed.

16. It is submitted by the learned counsels appearing for the respondents/defendants that when the prayer is in the nature of a judgement *in rem*, suit filed by individual not in the representative capacity or on obtaining the leave of the Court is not maintainable. The prayer without declaration of his status as Coordinator of the Party presupposing the existence of the post renders the suit unsustainable.

17. According to the respondents, the General Council Meeting convened on 11.07.2022 after due notice to all the members as per the party Constitution. It is contended that 2190 members of the General Council out of 2665 members present on 23.06.2022 at the General Council Meeting gave a written request as per Rule 19(vii) to the Presidium Chairman to convene the General Council Meeting. This request for Special General Council Meeting was made at the Meeting held on 23.06.2022 in view of standstill in party functioning. Considering the request, the date and time of the Meeting

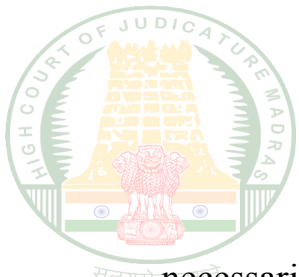


O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

सत्यमेव जयते was fixed as 11.07.2022 and announced immediately in the Meeting itself. This
WEB COPY
was tele-casted in all the visual media on 23.06.2022 and published in all the news papers, the next day. Therefore, the requirement of 15 days advance notice is fully complied.

18. Further, reading the Tamil version of Rule 19(vii), the learned Counsel appearing for the respondents submitted that if the Special General Council Meeting is convened based on the requestion of the 1/5th of the total number of members, there is no requirement of 15 days advance notice. Even assuming 15 days advance notice is required, in the instant case, the announcement made in the Meeting held on 23.06.2022 in the presence of 2190 members out of 2665 total members should be deemed to be valid notice since the purpose of the notice is fully served.

19. In this connection, the learned Senior Counsel for the respondents rely upon the commentaries on “Law and Practice of Meeting”, by Shackleton and the Division Bench of the Kerala High Court reported in **2022 SCC online Ker 1302 (Santharam Roy T.S. v. Travancore Devaswom Board Represented by its Secretary and others)**. It is emphasised that the notice does not



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

necessarily mean communication in writing. Any formal intimation of a Meeting is sufficient when no prejudice pleaded.

WEB COPY

20. The relevant portion in the Kerala High Court judgment cited

supra reads as below:-

“For answering th issue on the validity of Ext.P5 notice, we deem it apposite to refer few passages from Shackleton on the Law and Practice of Meetings, 13th Edition, at Page 47, which read thus;

“The regulations of the body on whose behalf notice is being given usually prescribe the method to be followed. The rules of a club, for example, may provide that notices of meetings posted at the clubhouse and a copy sent to every member. Encyclopedia of Forms and Precedents (5th Edn), Vol.7, Para.3215] Where no club rule prescribes a mode, it is within the general functions of the committee of a club to say how notices should be given on each particular occasion. Labouchere v. Earl of Wharncliffe [[L.R.] 13 Ch. 346 at 352] The greater the importance of the matter to be discussed, for example, where the expulsion of a club member is to be considered or rules are to be altered, the more the need to send a copy of the notice to each member rather than merely affixing it to the club notice board. On the other hand, in matters affecting clubs the courts eschew a meticulous



WEB COPY



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

examination of the rules reasonableness and fairness are given more weight than a rigid interpretation.

In the words of Megarry V.C. “allowance must be made for some play in the joints”. GKN Sports and Social Club, Re [[1982] 1 WLR 774, 776] In general, if there are no specific provisions, and subject to custom and practice - for example, the following of similar previous arrangements- notice may be given by advertisement : a notice in newspapers convening a meeting of debenture holders under a trust deed has been held good. Mercantile Investment and General Trust Co.v. International Company of Mexico[[1893] 1 Ch. 484]

Where a particular form of service is provided for in the regulations, no other form is permitted; thus, where service by post is stipulated, delivery by dropping the notice into the letter box personally, or by handing it to a clerk would not be in order.

It has been held that “post” includes registered post - TO Supplies (London) Ltd. v. Jerry Creighton Ltd. [[1952] 1 K.B. 42] - and, so far as documents that are required or authorised by any enactment to be sent by registered post are concerned, sending can be effected by the recorded postal delivery service. [Recorded Delivery Service Act 1962 Sec.1] Where an important notice is concerned, the use of recorded delivery can provide proof that it has been received; however, the use of this service or registered post for notice of meetings is rare. Where the regulations of the body concerned provide for notice to be sent by post, it is normally the responsibility of the



WEB COPY

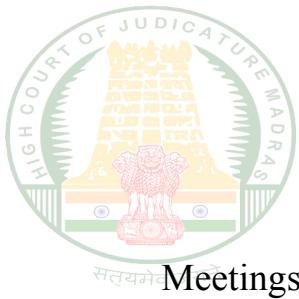


O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

member to keep up to-date the record of his address in that body's records. James v. Institute of Chartered Accountants [(1907) 98 LT 225]” (underline supplied)”

21. The Learned Senior Counsel appearing for the respondent further submitted that mode of Election for the post of Convenor and Joint Convenor which came into Rule Book by way of Amendment pursuant to the resolution passed by the Executive Counsel got lapsed since the amendment as per the Party Constitution not ratified by the General Council. Realising the said lapse, the Executive Council which met on 01.12.2021 decided to place the amendment before the General Council for ratification. But the amendment was not ratified in the Meeting held on 23.06.2022. Hence there can be no other consequence other than to hold the post of Coordinator and the Joint Coordinator as lapsed from 23.06.2022 for want of ratification by the General Council. Subsequently in General Council Meeting which is impugned in the suit, defacto approval has been accorded for all actions taken by the Coordinator and the Joint Coordinator.

22. It is always the practice in this Party to issue notice from the Head quarter for convening the General Council and Executive Council

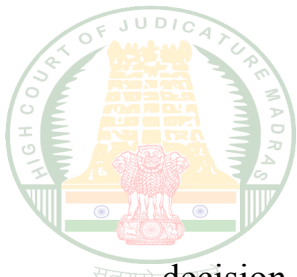


O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

WEB COPY

Meetings. The earlier General Council Meeting held on 12.09.2017 in which the plaintiff and the 5th defendant elected as Coordinator and the Joint Coordinator was also convened only through the Notice issued by headquarters and without any signature. Hence, the plaintiff cannot find fault in the Notice dated 01.07.2022 alleging it was issued by a person not authorised and it is an unsigned Notice.

23. In the absence of the post of Coordinator and the Joint Coordinator, the Presidium Chairman who has received request from more than 85% of the General Council members convened the Meeting in accordance with the bye-laws of the Party. Hence, it has to be declared as a Meeting convened and held validly. When not even 5% of the members support the plaintiff in C.S.No.118 of 2022 and 95% of the members are proceeding towards the direction of Single Leadership for effective functioning of the Party, the plaintiffs wants to retain the dual leadership which is found to be unworkable and detrimental to the interest of the Party and against the wish of the majority. It is submitted that the A.I.A.D.M.K Party as an association only brings about a contractual relationship among the members subject to the byelaws. As such, the whims and fancies of a single person cannot over ride the



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

सत्यमेव जयते decision of the majority.

WEB COPY

24. The learned Senior Counsel appearing for the respondents summed up his argument stating that the guiding principles for granting injunction are (i). balance of convenience, (ii). prima facie case and (iii). Irreparable injury. In this case, the applicants/plaintiffs have not made out any *prima facie* case to sustain their suits. The balance of convenience is in favour of the respondents, who represents 95% of the cadre and wants to run the party under single leadership for effective functioning of the Party. If such intention is restrained, it will cause irreparable loss to the Party and its cadre. Therefore, the applications are to be dismissed.

25. The learned counsel appearing for the applicant/plaintiff made his rebuttal arguments. Both the parties also submitted their written arguments.

26. This Court for the purpose of deciding these applications, formulates the following points for consideration:-

(1). Whether the plaintiff have locus to maintain the suit?



WEB COPY



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

(2). *Whether the General Council Meeting dated 11.07.2022 was convened by the person authorised to convene the Meeting ?*

(3). *In whose favour the prima faice case and balance of convenience lie ?*

27. On the day when Selvi J Jayalithaa died, this Party was ruling the State, Thiru.O.Panneerselvam, the plaintiff in C.S.No.118 of 2022 was elected as the Leader of the party Legislators in the Assembly and was made the Chief Minister. Thereafter, the Leadership was changed and Thiru.Edappadi K.Palanisami, was elected as the Leader by the Party legislators and he become Chief Minister. Misunderstanding arose between the Leaders of the Party. The cadres split into groups and were functioning under respective heads. After functioning as splinter group for some time, both the group decided to rejoin and convened the Executive Council and General Council Meeting on 12.09.2017.

28. This decision to reunite and convene General Council Meeting had a side effect. That was, a group led by Thiru.T.T.V.Dhinakaran, left the Thiru.Edappadi K.Palaniswamy camp. The Notice calling for the meeting



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

WEB COPY

jointly by two factions was challenged by one Thiru.P.Vetrivel, before this Court by way of suit seeking injunction. Against the dismissal of the Interlocutory Application by Single Judge he preferred Original Side Appeal before Division Bench in which, this Court observed:-

“10.6. The appellant raises a legal issue that the impugned meeting cannot be held by the combined faction of respondents No.1 to 3 and 5 under the banner 11 India Anna Dravida Munnetra Kazhaga (Amma, Puratchi Thalaivi Amma) as it is contrary to the constitution of the original party and the two orders passed by ECI. Mr.Sundaram says that there can be no objection to the two groups jointly convening the impugned meeting as they originate from the original party i.e., All India Anna Dravida Munnetra Kazhagan.

10.7.....

10.8. As noticed us by above the appellant is propounding the cause of respondent No.4. Having said so, if he has a legal right based on the constitution of the original party he can agitate the same in the suit as and when it goes to trial. The issue before us at this juncture is whether or not we should injunct the holding the impugned meeting.

10.9....

11. It is trite to say that in order to obtain an



WEB COPY



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

injunction the plaintiff would not only have to demonstrate that he has prima facie case but must also satisfy the court that the balance of convenience is in his favour, and if, the impugned event is allowed to occur it would cause irreparable damage to him.

11.1. We may also say that while dealing with application for injunction the Court has to keep in mind that it exercises equitable jurisdiction. If the motivation of the plaintiff is suspect then the court is entitled in law to desist from granting interlocutory relief to the plaintiff. Having regard to the submissions made before us that we are of the view that even if one were to assume at this juncture that the appellant has a legal right to sustain the suit, the balance of convenience does not appear to be in his favour. The holding of the meeting if, injuncted, would affect a large number of persons who are members of the General Council.

11.2 Furthermore, we see no impediment in law if rival factions of the original party choose to get together and jointly convene a meeting. The holding of the meeting by itself may or may not grant legitimacy to the outcome reached at the meeting but that by itself cannot be a ground for the Court to intervene and injunct the meeting.”

29. In the above background, when both the factions met on



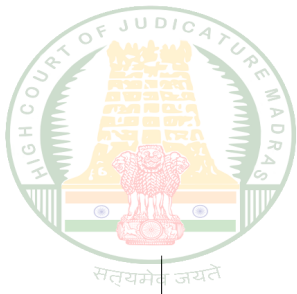
O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

12.09.2017, passed certain resolutions to amended the Party Rules.

WEB COPY

Accordingly, in the place of the General Secretary, the post of Co-ordinator and Joint Coordinator was created in the Party to discharge the functioning of the General Secretary and they resolved to abolish the Post of General Secretary recognising Selvi J Jayalalithaa as the eternal General Secretary of the Party. The Rules amended as per the resolution read as below:-

RULE 20:- GENERAL SECRETARY	As per wishes of the members of the party and the party cadre, PURATCHI THALAIVI Dr.J.JAYALALITHA shall be the eternal General Secretary of the party and no person shall be elected appointed/ nominated to that post. The Post of General Secretary stands abolished.
RULE 20-A:- CO-ORDINATOR AND JOINT CO-ORDINATOR	<p>i). The Co-ordinator and Joint Co-ordinator shall be primary members of the party for a continuous period of five years.</p> <p>ii). The Co-ordinator and Joint Co-ordinator shall be elected by the members of the General Council.</p> <p>iii). The Co-ordinator and Joint Co-ordinator elected as per sub rule (ii) shall hold the post for a period of 5 years.</p> <p>iv). The Co-ordinator and Joint Co-ordinator shall discharge perform their duties, obligations and functions and shall exercise their powers as per the Rules and regulations jointly.</p> <p>v). The Co-Ordinator and Joint Co-ordinator of the Party will be responsible for the entire administration of the Party.</p> <p>vi). The Co-Ordinator and Joint Co-ordinator will constitute the Executive Committee of the Central Organisation</p>



WEB COPY



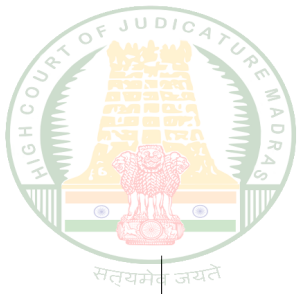
O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

consisting of the Co-Ordinator Co-ordinator, Chairman, Treasurer, Headquarters and Secretaries, District Secretaries and the nominated Joint members.

vii). The members of the Central Executive Committee, Treasurer and the Headquarters Secretaries nominated by the Co-Ordinator and Joint Co-ordinator will hold the office during the tenure of the office of the Co-Ordinator and Joint Co-ordinator.

If for any reason the post of the Co-Ordinator and Joint Co-ordinator becomes vacant before the expiry of the tenure the office bearers who were nominated by the previous Co-Ordinator and Joint Co-ordinator will hold office and continue to function till the new The Co-Ordinator and Joint Co-ordinator are elected and assume office.

viii). The Co-Ordinator and Joint Co-ordinator of the Party shall have the powers and responsibilities to convene the Executive and the General Council Meetings, to Implement policies and programmes of the Party as decided by the General and Executive Councils, to conduct elections and bye elections for Party Organisations, to examine the accounts of all the Party units through the Audit Committee, to manage by self and through the Treasurer the income and expenditure of the Party organizations at all levels, to manage the Party Office, movable and immovable properties of the Party, to represent the Party in the legal proceedings that may arise in respect of Party properties and to take necessary legal steps on



WEB COPY



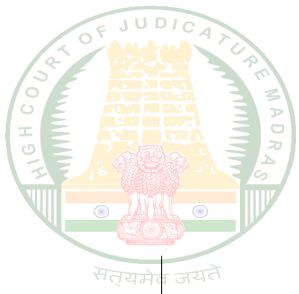
O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

behalf of the Party to protect them.

The Co-Ordinator and Joint Co-ordinator will preside over the Party conferences take all kinds of disciplinary proceedings in accordance with the Party rules against the Party units and its office bearers who violate the Party rules, regulations or act against the Party interest, party discipline, policies and programmes, including immediate suspension of any Party unit or office bearer. The Co-Ordinator and Joint Co-ordinator shall be the supreme authority to take a final decision on the disciplinary proceedings recommended by the Party units and shall have over all powers to take all steps to promote and preserve the Party policies and programmes and to develop and protect the Party organizations.

ix) The Co-Ordinator and Joint Co-ordinator are empowered to take such actions as he may deem fit on important political events, policies and programmes of urgent nature which cannot brook delay and await the meeting of either Executive Committee or General Council of the Party. Such decisions and actions have to be ratified by the General Council in its next meeting. However, it is open to the Co-Ordinator and Joint Co-ordinator to obtain the views of the General Council Members on such urgent matters by post when the Council is not in session.

x) The Co-Ordinator and Joint Co-ordinator are empowered to deposit the funds of the AIADMK in any of the legally constituted Banks or Financial Institutions either in Current Accounts or Fixed Deposits; to withdraw such funds and to



WEB COPY



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

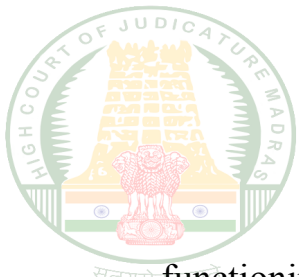
operate the accounts on behalf of the Party. The Co-Ordinator and Joint Co-ordinator are also empowered to obtain loans for the Party purposes from the above mentioned institutions on the security of the assets of the Party and to do all that is necessary in this regard for and on behalf of the Party.

xi) The Co-Ordinator and Joint Co-ordinator are vested with powers to authorize the Treasure of the Party to operate on his behalf the Bank Accounts namely to deposit or to withdraw funds, and also in respect of duties mentioned in sub-rule (x) of this Rule.

xii) The Authorisation Forms addressed to the Election Officers for the allotment of the Two Leaves Symbol to the candidates contesting on behalf of the AIADMK shall be signed only by the Co-Ordinator and Joint Co-ordinator.

xiii) The Co-Ordinator and Joint Co-ordinator are vested with the right to nominate Joint Secretaries or Deputy Secretaries, in case of need to Branch units, Union, Town, Township and District Units and other state units, besides elected functionaries. Moreover, the Co-Ordinator and Joint Co-ordinator are also vested with the Powers to nominate women in the posts, to compensate and give due representation to women if in any of the party units at any level, women do not elected represent one third of the posts.

30. With this arrangement and understanding the Party was



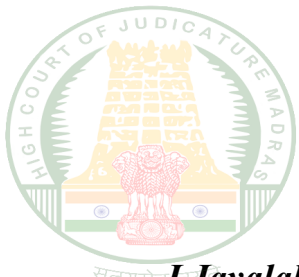
O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

सत्यमेव जयते
WEB COPY

functioning through Co-ordinator and Joint Co-ordinator. On 02.06.2022, the Co-ordinator and Joint Co-ordinator convened the General Council Meeting scheduled to be held on 23.06.2022. Attempt to discuss matters not approved by Co-ordinator was opposed and that became the subject matter of suit in C.S.No.111 of 2022. This meeting was held with restrictions imposed by the Division Bench of this Court. In the said circumstances, the subsequent General Council Meeting convened was announced and that become the cause for the present dispute.

31. To decide whether the suit is maintainable, it is imperative to look at the Division Bench Judgment of this Court in *S.Thirunavukkarasu -vs- Selvi J Jayalalithaa* reported in *(1997) III CTC 229*.

32. In the Suit for injunction filed by Selvi J Jayalalithaa, plea of maintainability was raised by the defendant. The Single Judge as well as the Division Bench negated the said plea. The observations made by the Division Bench of this Court in that case gains relevance in view of the similar plea raised by the respondent regarding maintainability of the present suits. Hence, the observation of the Division Bench in *S.Thirunavukkarasu Vs.*



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

J.Jayalithaa reported in (1997) III CTC 229 is reproduced below *in extenso*:-
WEB COPY

“35. In the light of the contentions of the parties, as can be seen from the pleadings and submissions, the following points arise for consideration and decision:-

i. Whether the suit filed by the plaintiff is prima-facie maintainable;

ii. Whether the meeting of the general council convened by the defendant on 3.6.1997 was authorized and valid; and

iii. Whether the order of the learned single Judge granting interim injunction calls for interference, keeping in view, prima facie case, balance of convenience, and irreparable injury, if any, that may be sustained if the order of injunction is refused?

We will deal with these points in seriatim.”

36. Point No. 1: According to the learned senior counsel for the appellants, the subject matter of the suit relates to the dispute regarding indoor management of the party affairs; the suit does not involve dispute as to the property of the party; the suit in the present form is not maintainable as the plaintiff has filed the suit in her individual capacity as the General Secretary and not for



WEB COPY



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

the party, and the suit is filed against the defendant in his individual capacity; as such the orders that may be passed cannot be binding on the members of the defendant's group; the suit is not also a representative suit in character; and there is implied bar in taking cognizance of the suit under paragraph 15 of the Symbols Order.

37. It is well settled that under Section 9 of the Code of Civil Procedure, all suits of civil nature can be entertained by a Civil Court unless such a suit is expressly, or by necessary implication, barred. It is not shown to us that there was any express bar or prohibition for the plaintiff in filing the suit. It cannot also be said that the suit is not of a civil nature.

38. Shri Shanthi Bushan, learned senior counsel relied on paragraphs 201 and 202 of Halsbury's Laws of England, Volume 6, Fourth Edition. Paragraph 201 gives definition of a club. Paragraph 202 reads:-

“202. Jurisdiction of court over constitution of club. The court does not take cognizance of the rules of a voluntary society, entered into merely for the regulation of its own affair, save to protect the disposal and administration of property. The rules of a club may effectively provide that the governing body shall be the final arbiter on questions of fact but cannot prevent its decisions on questions of law being determined by the courts.”



WEB COPY



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

Relying on the statement contained in paragraph 202, he submitted that the court could not entertain the suit as the dispute did not relate to the disposal and administration of the property.

39. A careful reading of this paragraph 202 does not show that there was a bar of suit, but it only shows that the Courts cannot take cognisance of the rules of a voluntary society entered into merely for the regulation of its own affairs save to protect the disposal and administration of property. In the same paragraph itself, it is further stated that the rules of a club may effectively provide that the governing body shall be the final arbiter of questions of fact but cannot prevent its decisions on questions of law being determined by the Courts (Italics applied). In this view, we are unable to agree with the submission that the suit of the plaintiff, prima facie, is not maintainable merely on the ground that the dispute does not relate to the disposal and administration of property of the party. Moreover the resolution No. 6 passed in the meeting convened by the defendant and held on 3.6.1997 is to request the plaintiff to hand over the party files, movable and immovable property belonging to the party to the defendant. Again resolution No. 18 directs the plaintiff to return a sum of Rs. 4 crores taken away by her from out of the party fund to pay her individual income tax arrears, and if she fails to return the said amount it should be collected through legal



WEB COPY



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

process. Hence it cannot be said at this stage that the dispute does not relate to disposal and administration of the property of the party, prima facie.

40. The learned counsel cited few more decisions in support of his submission, which are not directly on the point although some inferences were to be drawn from the said decisions. Further in the light of the judgment of the Honourable Supreme Court in “Most Rev. R.M.A. Metropolitan and Others v, Moran Mar Marthoma and another, 1995 Supp (4) S.C.C. 286, we consider it unnecessary to refer to the other decisions cited by the learned senior counsel for the appellants. Paragraph 28 of the said Judgment reads:-

“One of the basic principles of law is that every right has a remedy. Ubi jus ibi remediem is the well known maxim. Every civil suit is cognizable unless it is barred, “there is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous the claim, that the law confers no such right to sue” Ganga Bai v, Vijay Kumar, 1974 (2) S.C.C. 393. The expansive nature of the section is demonstrated by use of phraseology both positive and negative. The earlier part opens the door widely and latter debars entry to only those which are expressly or impliedly barred. The two explanations, one existing from inception



WEB COPY



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

and latter added in 1976 bring out clearly the legislative intention of extending operation of the section to such religious matters where right to property or office is involved irrespective of whether any fee is attached to the office or not. The language used is simple but explicit and clear. It is structured on the basic principle of a civilised jurisprudence that absence of machinery for enforcement of right renders it nugatory. The heading which is normally key to the section brings out unequivocally that all civil suits are cognizable unless barred. What is meant by it is explained further by widening the ambit of the section by use of the word 'shall' and the expression 'all suits of a civil nature' unless 'expressly or impliedly barred'."

41. In paragraph 29 of the said Judgment it is stated that not only suits which are civil, but are even of civil nature, can be entertained by Courts unless such suits are barred expressly or impliedly. The Constitution Bench of the Apex Court in Narayan Row v. Ishwarlal Bhagwandas, A.I.R. 1965 S.C. 1818, dealing with the expression "civil proceedings" has held,

"a proceedings for relief against infringement of civil right of a person is a civil proceedings."

In the same paragraph, referring to another case in Arbind kumar Singh v. Nand Kishore Prasad, A.I.R. 1968



WEB COPY



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

S.C. 1227 wherein it was held that all proceedings which directly affect civil rights are civil proceedings, it is further stated that the word 'civil nature' is wider than the word 'civil proceedings'. Thus section 9 would therefore be available in every case where the dispute has the characteristic of affecting one's rights which are not only civil but of a civil nature.

42. In paragraph 30 of the said judgment, their Lordships of the Supreme Court, referring to Explanations I and II Section 9, have noticed that there are numerous authorities where dispute about entry in the temple, right to worship, performing certain rituals, have been taken cognisance of and decided by civil Courts. In paragraph 38 of the same Judgment the Apex Court went on to say that,

“The dispute about the religious office is a civil dispute as it involves disputes relating to rights which may be religious in nature but are civil in consequence.”

The learned single Judge has also referred to and relied on the Judgment of the Apex Court aforementioned, and rightly so in our opinion also.

43. The learned single judge has stated that the plaintiff is entitled to hold the post of General Secretary



WEB COPY



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

unless she is legally removed or the term of office expired; membership in the party confers certain rights which cannot be denied except in accordance with the rules of the party; if her rights are interfered with as the General Secretary of the party, she was entitled to take remedy under Section 9 of the C.P.C. This being the position, we have no hesitation to say that the suit filed by the plaintiff being one of civil nature, prima facie, is maintainable though the dispute raised directly does not relate to any property of the party. We have already stated above that the reliance placed by the learned senior counsel for the defendant on paragraph 202 of Halsbury's Laws of England, on its plain reading, does not help the defendant. Added to that, when we have a direct decision of the Honourable Supreme Court, we are bound by it.”

33. Thus, it is very clear from the above observation of the Division Bench in respect of the very same Party and same bye-law and almost on an similar issue, the Court has held that Civil right of a person need not necessarily be in respect of property alone. Under Section 9 of Civil Procedure Code, all Suits of civil nature can be entertained by a Civil Court unless such a Suit expressly, or by necessary implication is barred.

34. In connection with maintainability, a supplementary plea raised stating that the relief sought is in the nature of representative character, but the



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

plaintiff has not obtained the leave of the Court under Order 1 Rule 8 C.P.C
hence suit to be dismissed.

WEB COPY

35. As an answer to this plea, the Learned Counsel representing the plaintiff/P.Vairamuthu (a) Amman P.Vairamuthu, in C.S.No.119 of 2022, rely upon the judgment of the Hon'ble Supreme Court in ***Krishnan Vasudevan and others -vs- Shareerf and others*** reported in ***(2005) 12 SCC 180***, wherein, the Hon'ble Supreme Court has observed as below:-

“3. Order 1 Rule 8 CPC does not prescribe any stage at which the application can be filed. In our opinion, the trial Court ought to have heard and decided the application on its own merits without regard to the stage at which it was filed. The error committed by the trial Court should have been corrected by the High Court.”

36. Following the judgment of the Division Bench of this Court and the judgment of the Hon'ble Supreme Court cited supra, this Court holds that, it is incorrect to plea that, the relief sought does not fall under the scope and ambit of Section 34 of the Specific Relief Act, 1963 or to say the plaintiff has no locus to maintain the Suit or the plaintiff has to be non-suited for not obtaining leave to sue.



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

WEB COPY

37. The reading of the complaints indicate that, as a Primary Member of the Party, as a member of the General Council, as the Co-ordinator and as the Treasurer of the Party, the plaintiff, in C.S.No.118 of 2022 is aggrieved by the manner in which the General Council Meeting called. It being contrary to the basic structure of the Party Constitution, he has approached this Court. Likewise, the plaintiff/P.Vairamuthu (a) Amman P.Vairamuthu, in C.S.No. 119 of 2022, as a Primary Member of the Party and the Member of the General Council has approached this Court, being aggrieved by the manner in which, the General Council is convened.

38. When the Party Constitution provides specific procedure to convene meeting and if anything done contrary to the written Rules which likely to cause injury to the right of the members, there is no bar to seek redressal from the Civil Court for protecting the civil right.

39. For survival of democracy 'Rule of Law' cannot be confined to governance of the State alone. Political parties which is entrusted with the



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

सत्यमेव जयते
WEB COPY

responsibility to run the State also should conduct their party affairs adhering to the Rule they have resolved to follow. When a *prima facie* case is made out that the Civil right of a member in a Club/Society/Association/Party is injured, the Court cannot decline to interfere and passively give seal of approval to the act of injury. When no other alternate remedy available, the cardinal principle of '*Ubi jus ibi remedium*' will prevail. The right of the Primary Member gets injured, if the process of convening the meeting is contrary to the Party Constitution.

40. Similarly, the principle of indoor management will apply only in respect of the deliberations in the meeting convened in accordance with their Bye Law. If the process of convening the meeting itself is faulty and contrary to law, there is no bar under Section 9 of Civil Procedure Code, to approach the Civil Court. Hence, the preliminary objections raised by the respondents are negatived.

Point (1):- Answered in affirmative holding the



WEB COPY



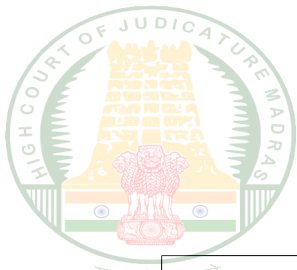
O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

plaintiffs have locus to maintain the suit as framed.

Point (2):- Whether the General Council Meeting convened by the person authorised to convene the meeting?

41. Rule 19 of the Party Constitution deals with “General Council of the Central Organisation”. When there was a Single Leader to the party namely 'General Secretary' till 2017 or after 2017 the amendment and introduction of Dual Leadership as 'Co-ordinator and Joint Co-ordinator', in the year 2017 as far as the process of convening the General Council, the Bye law of the party remains unchanged.

42. Rule 19 (vii) of the Party Constitution reads as below:-



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

Rule 19(vii)

The General Council Meeting shall be convened once in a year or whenever it is considered necessary by the Co-ordinator and Joint Co-ordinator by giving 15 days notice in advance of the date of meeting. The quorum for the meeting shall be one-fifth of the total number of members of the General Council. If one-fifth of the members of the General Council request the Co-ordinator and Joint Co-ordinator to convene the Special Meeting of the General Council, the Co-ordinator and Joint Co-ordinator should do so within 30 days of the receipt of such a requisition.

43. The plain reading of this Rule 19(vii) indicates that,

(a). the General Council meeting has to be convened at least once in a year.

(b). If the [General Secretary (Pre amendment),] **Coordinator and Joint Coordinator** (Post amendment) consider it necessary, shall convene the General Council Meeting by giving 15 days notice in advance of the date of Meeting.

(c) if 1/5th of the members of the General Council request the Coordinator and Joint Coordinator to convene this Special Meeting of the General Council, they should do so, within 30 days of the receipt of such a requisition.

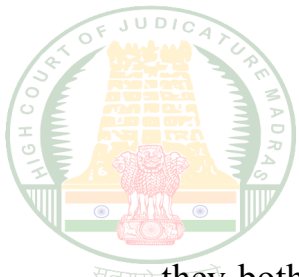
(d) For the coram of a General Council Meeting there should be atleast 1/5th of the total number of members of the General Council.



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

WEB COPY

44. The core issue in this '*lis*' is whether the General Council has been convened by the competent person in accordance with this Rule. While, the Learned Counsels appearing for the plaintiffs/applicants contend that, there is no ambiguity in the construction of the Rule. This provision has to be read, as it is with plain interpretation. Without any ambiguity, the Rule says that, the Coordinator and Joint Coordinator together, has to convene the General Council Meeting. Without the consent of one, the other cannot convene the meeting. While so, in no circumstances, the Temporary Presidium Chairman can convene the General Body meeting. To convene a Special General Council meeting under the second limb of Sub-Rule (vii) in Rule 19, the request by 1/5th of the total number of members of the General Council, should be given to the Co-ordinator and the Joint Co-ordinator. In the instant case, such request is not addressed to the Coordinator and the Joint Coordinator but addressed to a person who is not competent to receive. The Presidium Chairman, to whom the requisition apparently addressed and admittedly received for convening the General Council Meeting, is not in tune with the Rules. Furthermore, even if assuming that, more than 1/5th members desired to convene the General Council Meeting and made a request to the Co-ordinator and the Joint Co-ordinator but



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

they both or any one not inclined to conduct the meeting, then the remedy for
WEB COPY

such members is not to convene an illegal meeting. To buttress this submission, the following observation by the Division Bench judgement of this Court in **S.Thirunavukkarasu** case cited supra is relied:-

“69. As per rule 20(v) of the party, the General Secretary of the party is competent to convene the general council meeting. Rule 19(viii) does not authorise anyone else to convene the special general council meeting of the party. On facts, the learned single judge having held that the letter of requisition was not posted, has also held that even otherwise the plaintiff had convened the meeting of the general council as per Rule 19(viii). We have no good reason to differ from the finding recorded by the learned single judge that the letter of requisition was not given to the plaintiff. Once we take the view that the letter of requisition was not given to the plaintiff, the defendant had no authority to convene the meeting of the general council. Even otherwise Rule 19(viii) has not made any provision for convening the meeting of the general council by the requisitioning members in case the plaintiff as the general secretary failed to convene the meeting.

70. In this regard, the learned senior counsel for the defendant and the learned counsel for the impleading applicants relied on the order of the learned



WEB COPY



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

single Judge of this Court in Karuppasamy Pandian & 6 others v. All India Anna Dravida Munnetra Kazhagam and two others, (Application No. 1 19 of 1988 disposed of on 20.1.1988 is C.S. No. 28 of 1988). In our view it is not an authority for the proposition that in case the General Secretary fails to convene the meeting under Rule 19(viii), the requisitioning members can convene a meeting. In the said order the Court refused to convene a meeting by appointment of a Commissioner. But an observation was made that if the General Secretary refused to convene a meeting, it is always open to any member of the party's general council to convene a meeting and take any decision after they establish their majority. In our view the order governs the facts of that case in the given circumstances. Even otherwise we do not agree that the requisitioning members may convene a meeting in case the general secretary fails to convene a meeting in terms of Rule 19(viii). [Emphasis added].

71. Rule 20(v) specifically states that the general secretary of the party shall have the powers and responsibilities to convene the executive and general council meeting. Rule 19(viii) also obliges the General Secretary to convene special meeting of the general council on requisition within 30 days of the receipt of such requisition. Rule 19(viii) has made a specific provision to preside over the general council meeting, that in the absence of Chairman, one of the members of the general



WEB COPY



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

council elected by the body shall preside over the meeting. Again Rule 23(ii) states that in the absence of the chairman, one of the members present will preside over and conduct the meeting of the central executive committee and general council. In the very party rules, when provisions are made for presiding over meetings in the absence of chairman, a similar provision could have been made in case of Rule 19(viii) in the matter of convening a meeting. [emphasis added]

72. The argument of the learned senior counsel for the defendant is that Rule 19(viii) may be harmoniously construed so as to serve the purpose of the rule; if the general secretary does not convene the meeting, the requisitioning members cannot be made helpless, and in the normal course, having given the requisition, they were entitled to have a meeting, and if not convened by the general secretary within the given time, they could themselves convene such a meeting. He also added that even if the general secretary convenes a meeting within 30 days from the date of receipt of the requisition fixing the date of the meeting after several years, it will create an anomalous situation. In that regard the learned counsel submitted that convening a meeting must be taken as holding a meeting. As already noticed above, general council meeting has to be called at least once in six months. In case the general secretary convenes a meeting within the time given but scheduling to hold the



WEB COPY



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

meeting after few years, in such a situation it can always be challenged as unreasonable and stating that the very object of the rule is defeated or on such other grounds available. It is equally open to the members of the party to amend the rule if so desired so as to make a specific provision in this regard. [Emphasis added]

73. Rule 19(vii) says that meeting of the general council shall be held once in six months by giving 15 days notice in advance of the date of the meeting. But in Rule 19(viii) of the same rules, it is stated that if a requisition is made the general secretary has to convene special meeting within 30 days from the date of receipt of such requisition. Even when the rules were framed a clear difference and distinction between holding a meeting and convening a meeting was kept in view.

45. It is submitted by the Learned Counsel for the plaintiffs/applicants that, the question of not convening the meeting by the Co-ordinator and Joint Co-ordinator does not arise in the present case since no valid requisition letter was given to the Co-ordinator and Joint Co-ordinator for convening the meeting. As far as the letter alleged to have been given by 2190 members on 23.06.2022 at the meeting venue, on the face of it clearly show that, it is a manufactured document for the purpose to justify the illegal



meeting.
WEB COPY



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

46. The letter requesting to convene the next General Council Meeting is read to the Court by the Learned Counsel for the plaintiff. This letter is addressed to three persons namely,

(i).	Thiru.Tamil Magan Hussain as the temporary Presidium Chairman
(ii).	Thiru.O.Paneerselvam, the Coordinator
(iii).	Thiru.Edappadi K.Palaniswami, the Joint Coordinator.

47. The very introductory paragraph of this letter indicates that, this requisition letter was given prior to the commencement of the meeting dated 23.06.2022. The list of names and designation is annexed to this requisition letter. It is brought to the notice of this Court by the Learned Counsel for the plaintiffs that, some of the signatories have affixed their signatures with date as 20.06.2022 i.e., 3 days prior to the letter of requisition present to Thiru.Tamil Magan Hussain. At this juncture, it is relevant to extract the following paragraphs in the counter affidavit signed by Thiru.Edappadi K.Palaniswami and duly attested by the Advocate on 08.07.2022, wherein, it is stated at paragraph Nos.23 & 24 as:-



WEB COPY

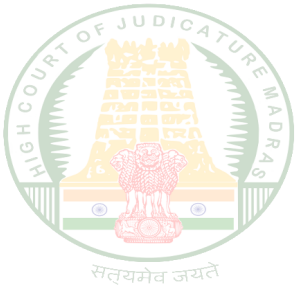


O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

“23. At the meeting 2190 members out of the total 2665 members(around 82%) made a requisition for a General Council Meeting to be convened immediately with the date being announced at the very same meeting for discussing and taking decisions on single leadership. Clearly, the members wanted a Special meeting under Rule 19(vii) to be convened within 30 days of its requisition.

24. As mentioned above, with the non-ratification of the amendments to be bye-laws made on 01.12.2021 lapsed and so did the election of the Co-ordinator and Joint Co-ordinator. Therefore, the requisition for the meeting by 2190 members that was read out at the meeting was discussed by the Office bearers at the meeting and it was decided to convene the General Council on 11.07.2022. This decision was announced by the 4th respondent at the meeting on 23.06.2022. The notice of the meeting was given by way of announcement at the meeting itself where all the intended notices were expected to be present.”

48. In the Typed Sets of paper furnished by Thiru.Edappadi K.Palaniswami, the requisition letter from 2190 members is annexed and it reads as below:-



WEB COPY



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

வணக்கம்.

இன்று 23.06.2022ல் திருவள்ளூர் மாவட்டம் ஸ்ரீவாரி வெங்கடாஜலபதி திருமண மண்டபத்தில் தற்காலிக அவைத்தலைவர், திரு.தமிழ்மகன் உசேன் அவர்கள் தலையிடை நடைபெற உள்ள இந்த பொதுக்குழுவில் இத்துடன் இணைக்கப்பட உள்ள 2190, பொதுக்குழு உறுப்பினர்களால் கையொப்பமிட்டு கொடுக்கப்பட்டு கொடுக்கப்பட்டுள்ள பொருளை விவாதிக்க கோரிக்கை வைக்கின்றோம்.

கழகம் தற்போது உள்ள நிலை குறித்தும், குறிப்பாக இரட்டை தலைமையால் கழகத்திற்கு ஏற்பட்டுள்ள பின்னடைவுகள், சங்கடங்கள், நிர்வாக சிக்கல்கள் பற்றியும், ஆளும் திமுக அரசையும், கட்சியையும், பிரதான எதிர்கட்சி என்ற முறையில் இரட்டை தலைமையால் கடுமையாக, எதிர்த்து செயல்பட முடியாத நிலை ஏற்பட்டு உள்ளது. இதனால் கழக தொண்டர்கள், நிர்வாகிகள், மற்றும் பொது மக்களிடையே மிகுந்த ஏமாற்றமும், அதிர்ச்சியும் ஏற்படுத்தி உள்ளது. இரட்டை தலைமையின் முரண்பாடான, தெளிவில்லாத ஒருங்கிணைப்பில்லாத செயல்பாட்டால் தொண்டர்களிடையே மிக பெரிய சோர்வு ஏற்பட்டு உள்ளது.

எதிர் கட்சியாக உள்ள இந்த நிலையில் 100 ஆண்டுகள் ஆனாலும் கழகம் நிலைத்து நின்று மக்கள் பணியாற்றும் என்ற அம்மா அவர்களின் ஆசை ஈடேற வேண்டும் என்றால் **புரட்சித் தலைவர் M.G.R, புரட்சித்தலைவி அம்மா** அவர்களை போன்று வலிமையான, தைரியமான, தெளிவான ஒற்றை தலைமை ஏற்படுத்த வேண்டும்.

எனவே இப்பொதுக்குழுவில் இரட்டை தலைமையை ரத்து செய்துவிட்டு ஒற்றை தலைமையின் கீழ் தொண்டாற்றுவது சம்மந்தமாக விவாசித்து பதிவு செய்யவேண்டும் என்றும் இந்த பொதுக்குழுவில் அடுத்த பொதுக்குழுவில் தேதி முடிவு செய்ய அறிவிக்க வேண்டும்



WEB COPY



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

என்று *[The line underscored are hand written and inserted between the typed letter] தொண்டர்கள் சார்பாகவும் பொதுக்குழு உறுப்பினர்கள் சார்பாகவும் தாழ்மையுடன் வேண்டி கேட்டு கொள்கிறோம்.

நன்றி

49. As pointed out, some of the signatories have affixed their signature with date as 20/06/2022. While so, in the interim counter affidavit filed by Thiru.Edappadi K.Palanisamy, he has sworn that, in the said meeting 2190 members out of 2665 members i.e., around 82% made a request for a General Council Meeting to be convened immediately with a date being announced at the very same meeting. This statement made on oath by Thiru.Edappadi K.Palanisami, is based on the hand written insertion made in the typed document he relies upon. The said letter as it is typed does not seek for convening the General Council Meeting or to announce the date of meeting immediately. This letter prepared much prior to the meeting and addressed to the Temporary Presidium Chairman, Co-ordinator and Joint Co-ordinator for discussion of Single Leadership in the meeting scheduled on 23/06/2022. The hand written insertion for fixing date for next General Council is an interpolation only to make it believe that date of General Council Meeting fixed based on this request, on that day. If this letter is to be considered as a requisition letter for convening General Council meeting, then it should have



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

WEB COPY

been addressed to the Co-ordinator and Joint Co-ordinator and there must be evidence to show that both of them received it. This Court finds no such material placed by the respondents to show that, a valid requisition letter from 1/5th members of the General Council reached the Co-ordinator and the Joint Coordinator, for them to convene the special General Council Meeting, within 30 days from the receipt of the requisition letter.

50. Assuming, the requisition letter deemed to be a valid letter of request to convene General Council Meeting, even then holding of the General Council meeting on 11.07.2022 will not be valid since the Bye-Laws specifically provides that 15 days Notice in advance to be given to the members. Admittedly, the Notice for meeting in writing is dated 01.07.2022. This does not satisfies the Rule which mandates 15 days Notice in advance. If there is no specific provisions regarding service of Notice, then the similar arrangement followed previously should be followed.

51. The contra contention of the respondents in this regard are two folds:-

First, the Rule of 15 days advance notice is only for ordinary General



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

WEB COPY

Council meeting and not for Special General Council meeting convened at the request of more than 1/5th members. Rule 19(vii) of Party Constitution contemplates 3 different kinds of General Council meeting:-

- i). General Council convened once in year (mandatory),
- ii). Whenever considered necessary by the Co-ordinator and the Joint Coordinator,
- iii). On the request of not less than one fifth of the total members of the General Council.

The first limb of the Rule 19(vii) of the Party Constitution deals with the situations arising under (i) and (ii), where it is necessary for 15 days advance Notice. In case of situation (iii), the Rule is silent about the Notice. It only says that, from the date of receipt of the request from 1/5th of total members, the meeting to be convened within 30 days. This Court, in Thirunavukkarasau case *cited supra*, has clarified that, convening the meeting and holding the meeting connotes two different events. Therefore, the two limbs of the Rule 19 (vii) of the Party Constitution, are to be read distinctively. The 15 days advance notice found in the first limb cannot be read down into the second limb.



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

WEB COPY

52. Secondly, for a meeting conducted as per the second limb of the Rule 19(vii) of the Party Constitution, which is a Special General Council Meeting convened in case of imminent necessity or urgency on the request of more than 1/5th of the total members, Notice in writing is only optional. Therefore, when the request by 2190 members for Special General Council received by the Presidium Chairman on 23/06/2022. He, in exercise of his power under Rule 20-A(vii) of the Party Constitution, due to the vacancy of the Co-ordinator and Joint Co-ordinator post, convened the meeting and informed to the members through letter dated 01/07/2022.

53. The Learned Senior Counsel for the respondents submit that the purpose of Notice is to inform the members about the ensuing meeting. This had been effectively made public through visual and print media.

54. Though, the said arguments sound superficially impressive, the illogic in the arguments and the unreasonableness in the said submissions is that, when the written Constitution of the Party specifically mandates there must be 15 days notice for convening General Council meeting, by reading disjunctively and pointing the omission of the word '*written*' in Rule 19 (vii), it



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

is argued that, the meeting dated 11/07/2022 was convened validly by the Presidium Chairman, who is empowered to convene the meeting if the post of Co-ordinator and Joint Co-ordinator is vacant.

WEB COPY

55. Splitting the Sub-rule 19(vii) of the Party Constitution, into compartment and to plead that, the mandate of 15 days advance Notice is not applicable to Special Meeting convened at the request of more than 1/5th members will be in contrary to law settled by this Court earlier and the practise followed by this Party so far.

56. If such argument is accepted, a minority group of General Council members constituting a little over and above 1/5th of total members, may join together and make announcement today through media and will sent the Notice subsequently and venture to convene the meeting without 15 days advance notice this is what precisely happened earlier in this Party and came for judicial scrutiny in the case of *S.Thirunavukkarasu -vs- J Jayalithaa and others*. The Division Bench of this Court in that case has categorically held that, even if the Special Meeting of General Council of this Party to be convened on the request of more than 1/5th members, the notice to convene the



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

WEB COPY

General Council Meeting must be 15 days in advance. Causing notice through certificate of posting and preponing the date of meeting will render such meeting *otiose*.

57. At this juncture, it is also to be noted that in the past, no General Council meeting held without written notice or 15 days advance notice.

58. As pointed out by the Learned Counsel representing the plaintiff/P.Vairamuthu (a) Amman P.Vaiaramuthu, in C.S.No.119 of 2022, the notice for General Council Meeting in all other earlier occasions till Selvi J Jayalalithaa was the General Secretary, has been sent in writing with the signature of Selvi J Jayalalithaa as General Secretary. After the introduction of Dual Leadership, the notice for General Council Meetings were signed by Thiru.O.Paneerselvam and Thiru.Edappadi K.Palanisami as Co-ordinator and the Joint Co-ordinator respectively. The copy of the notices annexed in the typed sets of paper indicates, the past practise of the Party is to send written notice with signature of the competent person i.e., Selvi J Jayalalithaa for the General Council meetings held on 14.12.2010, 14.02.2011 and 10.12.2012, when she was the General Secretary of the Party and by Co-ordinator and Joint



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

Co-ordinator signed together for the meetings dated 24.11.2019, 09.01.2021
and 23.06.2022.

59. In response to the submission of Mr.Vijaya Narayan, the Learned Senior Counsel appearing for the 5th defendant, referring the Notice dated 28/08/2017 for General Council Meeting held on 12/09/2017 without signature and issued from the Head Quarters, Mr.R.Guru Krishna kumar, Learned Senior Counsel representing the plaintiff/O.P.Panneerselvam, in C.S.No.118 of 2022 admits that this notice for General Council Meeting was sent in the name of Party Headquarters without any signature when these two groups were functioning separately as A.I.A.D.M.K (Amma) and A.I.A.D.M.K (Puratchi Thalaivi Amma). Even then, the meeting was after written Notice with clear 15 days gap. After resolving the dispute and functioning jointly as the Co-ordinator and the Joint Co-ordinator, Notices for the subsequent General Council never been sent without the signatures of the Co-ordinator and Joint Co-ordinator. Never unsigned notices in the name of Party Headquarters sent to the members. Except the Notice of the impugned Meeting held on 11.07.2022. To buttress this submission, the Notices for General Council meeting dated 24.11.2019, 09.01.2021 and also 23.06.2022 were furnished. In



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

सत्यमेव जयते all these Notices, this Court finds both Co-ordinator and the Joint Co-ordinator
WEB COPY
have signed.

60. This Court also find in the Pre- Amended Party Constitution, that is before abolishing the post of General Secretary by deleting Rule 20 and inserting Rule 20-A to 20-C, Under 20 (5) of the Party Constitution, it is stated that, the members of the Central Executive Council nominated by the General Secretary shall be co-terminus with the tenure of the General Secretary, who constituted the Central Executive Council. In case, if the post of General Secretary falls vacant, till the new General Secretary elected and takes charge of Office, the Central Executive Council members will continue to discharge the functions of the party. Under Rule 20(vii) of the Party Constitution, it is stated that, in case of emergency to decide on any political event, policy or plan of the Party, the General Secretary empowered to take decision and get it ratified in the ensuing General Council Meeting. In alternate, the General Secretary can get the opinion of the General Council members in writing and get ratification. (*Refer Annexure: Tamil version in Page No.XXX*). Later, in the year 2017, while deleting this Rule and inserting Rule 20-A to 20-C, by amending the Party Constitution with the primary intention to substitute the



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

post of General Secretary with the post of Co-ordinator and Joint Co-ordinator,
WEB COPY
the provision analogous to Rule 20(vii) consciously omitted.

61. The practice adopted by the party in the past clearly show that, meetings were convened only on written notice duly signed by the competent person. So the defence to justify the the General Council meeting held on 11.07.2022, without proper notice and without adhering 15 days notice in advance miserable fail.

62. The competency of the person who called the General Council Meeting also requires scrutiny in this case. According to the respondents/defendants, Thiru.Tamil Magan Hussain was elected as Presidium Chairman of the party on 23/06/2022 by the General Council. On the same day the post of Co-ordinator and Joint Co-ordinator became vacant. In such circumstances, Rule 20-A(vii) of the Party Constitution empowers the Presidium Chairman, to discharge the functions of the Co-ordinator and Joint Co-ordinator. Hence, there is no illegality in the Persidium Chairman convening the General Council meeting on 11.07.2022.



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

WEB COPY

63. Further, it is contended by the Learned Senior Counsels for the Respondents/Defendants, that though after 23.06.2022, the post of Co-ordinator and the Joint Co-ordinator become vacant, however, the members of the Central Executive Committee continue to exercise their function as empowered under the Party Constitution to carry forward the activities of the Party. They accordingly, convened the General Council meeting on 11/07/2022.

64. It is contended by the respondent's counsel that, on 01.12.2021, the Executive Council Meeting Rule 20-A(ii), Rule 43, and Rule 45 was amended and the election of Co-ordinator and Joint Co-ordinator conducted as per the amended Rule. But, the resolution for amendment not ratified by the General Council in its meeting dated 23.06.2022. So, the office of Co-ordinator and Joint Co-ordinator has become vacant.

65. In the Executive Council meeting held on 01/12/2021, by a special resolution, it has been resolved to amend Rule 20-A (ii), Rule 43 and Rule 45. Accordingly, the resolution was passed. The existing Rules and the Rules as amended reads as below:-

Rule	Existing Rule	Amended as
------	---------------	------------



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

Rule 20-A (ii)	The Co-ordinator and the Joint Co-ordinator shall be elected by the members of the General Council.	The Co-ordinator and the Joint Co-ordinator shall be elected jointly by the Primary Members of the Party through Single Vote.
Rule 43	The General Council will have powers to frame, amend or delete any of the Rules of the Party Constitution.	The General Counsel will have powers to frame, amend or delete any of the Rules of the Party Constitution. Except the Rule for electing the Co-ordinator and the Joint Co-ordinator by the Primary Members, since it being the Fundamental Spirit of the Party Constitution.
Rule 45	The Co-ordinator and Joint Co-ordinator are fully authorised to relax or make alterations to any of the aforesaid Rules and Regulation of the Party.	The Co-ordinator and Joint Co-ordinator are fully authorised to relax or make alterations to any of the aforesaid Rules and Regulation of the Party. However, they are not empowered to exempt or relax the Rule for electing the Co-ordinator and the Joint Co-ordinator by the Primary Members, since it being the Fundamental Spirit of the Party Constitution.

66. The contention of the Learned Counsels representing the respondents is that the Election of Coordinator and Joint Coordinator through single vote was on the strength of the amendment to Rule 20 A (ii) as resolved by the Executive Council meeting held on 1/12/2021. The power to amend the Party Rule is vest only with the General Council as per Rule 43. Since the amendments resolved by the Executive Council not been ratified by the General Council, the election of the Coordinator and Joint Coordinator gets lapsed.



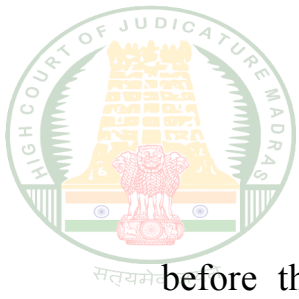
O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

WEB COPY

67. The Learned Senior Counsel for the Plaintiff/Applicant term this argument as fallacious. In the opinion of this Court, 'YES' it is fallacious.

68. The records admitted by both the parties reveals that, the election process for the post of Co-ordinator and Joint Co-ordinator by single vote method was announced on 02/12/2021. Since, there was no other nomination received except from Thiru.O.Panneerselvam, for the Co-ordinator post and from Thiru.Edappadi K.Palaniswami for the Joint Co-ordinator post, they were declared elected unopposed after the time prescribed for receiving nomination. Thereafter, they have jointly submitted the list of Office Bearers and got the approval of the Election Commission of India. The election of Co-ordinator and Joint Co-ordinator accepted, approved and acted upon. All of a sudden, the defendants/respondents claim that, the amendment resolved at Executive Council was not been ratified by the General Council in its meeting dated 23.06.2022.

69. In fact, the perusal of the draft resolution for the General Council meeting dated 23.06.2022, this Court finds there is nothing to indicate that the election of Co-ordinator and Joint Co-ordinator was intended to be placed



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

WEB COPY

before the General Council for ratification. (a)The Co-ordinator and Joint Co-ordinator were elected unanimously by the Primary members. The Party Constitution does not requires ratification of their election by the General Council. (b)A duly conducted election and taken on record by the Election Commission, shall not suddenly become lapse or vacant when its tenure is till the year 2026. (c) When the Co-ordinator or the Joint Co-ordinator had not resigned or become vacant for any other reason, the respondents cannot presume that the post has become vacant.

70. By pleading, the election of the Co-ordinator and the Joint Co-ordinator alone get lapsed or vacated but the elections for other post in the party appointed by the Coordinator and Joint Coordinator in exercise of their power under Rule 20 A (vii), pursuant to the same process is valid and the members of the General Council elected in the same process can declare the post of Co-ordinator and. Joint Co-ordinator lapsed/vacant are pleas not only inconsistent but also contrary to the Rules of the Party.

71. Rule 20(A)(iii) of the Party Constitution specifically states that the Co-ordinator and Joint Co-ordinator elected shall hold the post for a period of 5 years. Thiru.O.Panneerselvam and Thiru.Edappadi K.Palanisami were



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

earlier elected by the General Council Members in the meeting held on
12.09.2017. Their tenure to hold these post is for 5 years i.e., till 11.09.2022.

Again, they were declared elected for the said post unopposed on 04/12/2021 and the Election Commission also informed about their election along with the election of other Office Bearers. Thus their tenure will come to end only on 03.12.2026. It is a weird assumption by the defendants/respondents that the Election of Co-ordinator and Joint Co-ordinator alone suffers inherent violation of the Party Constitution and not the election of other posts.

72. If such an assumption is accepted and the election of Co-ordinator and Joint Co-ordinator dated 04/12/2021 held as *non-est*, then the consequence should be the restoration of *status quo ante*. That means, the tenure of these two persons will come to an end only on 11/09/2022 as per the earlier Election. However, contrary to the records and admissions, it is now argued that, the election for Co-ordinator and Joint Co-ordinator requires ratification by General Council. Also, contrary to the records, it is argued that, Executive Council requested to get ratification of their election from the General Council meeting dated 23/06/2022 and the same not considered.



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

WEB COPY

73. Perusal of the draft resolutions 1 to 23 which were permitted to discuss and take decisions, the Court finds that there is no resolution about ratification of the Co-ordinator and Joint Co-ordinator election. In fact, in his letter dated 28.06.2022 addressed to the Chief Election Commissioner, Thiru.Edappadi K.Palaniswami admits this fact. While so, for reason unfound, an illusion is created as if the duly elected post of Co-ordinator and Joint Co-ordinator lapsed/vacated.

74. In this context, it is appropriate to refer Rule 42 of the Party Constitution, [*Refer Annexure: Page No.XLI*] which says, if the Co-ordinator and the Joint Co-ordinator feel that there are genuine reasons according to changing situations, they are vested with the power to exempt from the above mentioned Rules and Regulations. Therefore, it is clear that the party constitution explicitly provides procedure for any such exigency/ eventuality. While so, the submissions made on behalf of the respondents/defendants that the dual leadership post introduced after abolishing the post of General Secretary got lapsed by efflux of time or fell vacant for want of ratification by the General Council does not appeal to any test of reasoning.



WEB COPY



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

75. To put it in a nutshell:-

(i). The General Council meeting dated 11/07/2022 was not convened by person competent to convene the General Council meeting.

(ii). The said meeting was not convened providing 15 days advance notice.

(iii). The contention that the post of Co-ordinator and Joint Co-ordinator lapsed after 23.06.2022 is borne out of imagination. The reason to claim these post fall vacant after 23/06/2022 is baseless. Invented to suit the convenience and cover up the violation of the Party Constitution.

(iv). Rule-20(A)(vii) of the Party Constitution is a provision which deals with exigencies when the post of Co-ordinator and Joint Co-ordinator becomes vacant before the expiry of the nominated Central Executive Committee office bearers tenure. This provision will no way give right to the temporary Presidium Chairman to convene the General Council Meeting.

(v). The Sub-Rule(viii) of Rule 20-A vest with the Co-ordinator and the Joint Co-ordinator, the powers and responsibility to convene the Executive Committee and General Council Meeting, to implement policies and programmes of a Party and to conduct Elections and bye-Elections for the party organ. In case, if they refuse to convene the meeting, the General Council



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

members should resort to the 2nd limb of Rule 19(vii) of the Party Constitution.

WEB COPY

If a valid request is made by 1/5th of the total members, the Co-ordinator and Joint Co-ordinator are bound to convene the meeting within 30 days of the Notice. The date of the meeting should be informed in writing, 15 days in advance. Thus, the General Council Meeting dated 11.07.2022 not convened by person authorised, also suffers short of 15 days notice in advance.

Point (3). Whether the prima facie case and balance of convenience lie in favour of the respondents/defendants?

76. The final submission made by the Learned Senior Counsel for the respondents/defendants is that the balance of convenience is in favour of the respondents, who commands the support of more than 95% of the General Council Members, who were elected by the primary members. Which, in other words means that, more than 95% of the primary members are behind Thiru.Edappadi K.Palaniswami, who has now been elected as temporary General Secretary of the Party in the General Council meeting held on 11.07.2022. In that meeting, it is resolved to conduct the General Secretary Election and Election Officer already nominated for the said purpose.



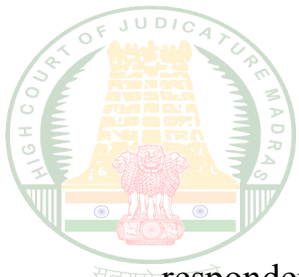
O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

WEB COPY

However, in view of the interim order of the Hon'ble Supreme Court, which has directed parties to maintain *status quo*, the election process for the post of General Secretary not proceeded any further. The balance of convenience is in favour of the respondents/defendants, who want to run the party democratically and face the primary members to be elected as the Party General Secretary. If the prayer of the injunction acceded, it will cause irreparable loss to the respondents.

77. This Court, while considering the prayer for injunction, bound to apply the triple test, namely, *prima facie case*, balance of convenience and irreparable injury. Undoubtedly, if injunction is not granted, Thiru. Edappadi K.Palaniswami, who convened the General Council meeting contrary to the written provisions of the Party Constitution will be in a more convenient position, since after the impugned meeting, the plaintiffs/applicants and few others are removed from the Party Primary Membership. They cannot even participate/contest in the proposed General Secretary Election.

78. The balance of convenience in the given contest must be tested from the arm chair of the Primary Members who are the foundation of the Party and not from the Leaders point of view. The plea made by the



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

WEB COPY

respondents/defendants that the majority of the primary members in the Party feel that dual leadership causes inconvenience in the administration of the Party and they cry for Single Leadership is not based on any quantifiable data. Particularly, when the very same dual leadership were able to run the Government as Chief Minister and the Deputy Chief Minister for nearly 4½ years successfully amidst various speculation and administering the Party as Joint Co-ordinator and Co-ordinator for nearly 5 years. During this period they together decided the electoral alliance, they jointly selected candidates for Elections held at all levels and fought several elections. While so, how suddenly between 20.06.2022 and 01.07.2022, the Party with more than 1 ½ crores of cadre strength decided for change the existing dispensation through 2500 old General Council Members and whether, the views of abext 2500 members really reflects the view of 1½ crores primary members are questions need to be examined and be tested. As per the party Constitution, amendments can be made, but it should be by alone following due process. It is for the members of the Party to decide about Leadership and the Court cannot interfere in their decision, but if there is patent violation of the process, there is no bar to seek remedy through Court.



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

WEB COPY

79. This Court has no doubt in its mind that notice dated 01.07.2022 calling for General Council meeting for on 11.07.2022 by a person who is not authorised to call for meeting is *void ab initio*. If the consequence of the void meeting allowed to sustain, it will cause inconvenience to the Party cadres, who will be uncertain about their Leadership. From the typed set of documents, this Court take notice of the fact that due to the dispute between these two Leaders, in the local body election held recently, the party men at the grass root those who contested the election were not able to get the recognised Election Symbol 'two leaves'. Since, they both failed to make request to the Election Commission jointly for allocation of reserved symbol to their Party candidates, the Election Commission declined to allot reserved symbol. This is an irreparable injury as far as the partymen are concerned.

80. For the above said reasons, the ***Original Application Nos.368, 370 and 379 of 2022 are disposed of***, with the following directions:-

(i) There shall be an order of *status quo ante* as on 23.06.2022.



WEB COPY



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

(ii) There shall be no Executive Council meeting or General Council meeting without joint consent of the Co-ordinator Thiru.O.Panneerselvam and Joint Co-ordinator Thiru.Edappadi K.Palaniswami.

(iii) There shall be no impediment for the Co-ordinator and the Joint Co-ordinator on their own to convene the General Council Meeting jointly to decide the affairs of the party including amendment of the party constitution restoring Single leadership.

(iv) If a proper representation from not less than 1/5th members of the total members of the General Council is received, the Co-ordinator and the Joint Co-ordinator shall not refuse to convene the General Council meeting.

(v) The General Council meeting, on such requisition shall be convened within 30 days from the date of receipt of the requisition and it shall be held after 15 days advance Notice given in writing.



WEB COPY



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

(vi) In case, the Co-ordinator and the Joint Co-ordinator are of the opinion that, for any reason further direction is required for conducting the General Council meeting or need assistance of Commissioner for conducting the meeting, it is open for them to approach this Court and seek necessary relief.

81. With the above directions, these *Original Applications are disposed of*. There shall be no order as to costs.

17.08.2022

Index : Yes.
Speaking order/Non-speaking order
ari/rpl/bsm

Enclosure : **Annexure**

Dr.G.JAYACHANDRAN, J.

ari/rpl/bsm



WEB COPY



O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

Delivery Common Order made in
O.A.No.368 of 2022 in C.S.No.118 of 2022
O.A.Nos.370 & 379 of 2022 in C.S.No.119 of 2022

17.08.2022