

D.Ananthi Vs. K.Chandrasekaran

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Court : Chennai

Decided On : Jun-06-2014

Judge : The Honourable Mr. Justice T.Raja

Appellant : D.Ananthi

Respondent : K.Chandrasekaran

Judgement :

THE HIGH COURT OF JUDICATURE AT MADRAS Dated:06.06.2014 Coram
THE HONOURABLE Mr.JUSTICE M.JAICHANDREN AND THE HONOURABLE
Mr.JUSTICE M.VENUGOPAL O.S.A.No.129 of 2014 and O.S.A.No.143 of 2014
*** O.S.A.No.129 of 2014: 1.D.Ananthi 2.A.Sundararaj
..Appellants/Applicants/Third Parties V.

1.K.Chandrasekaran ..1st Respondent/ 1st Respondent/Applicant/Plaintiff
2.S.V.Angappan 3.The Chairman cum Managing Director, Tamil Nadu Generation
and Distribution Corporation Limited, No.144, Anna Salai, Chennai 600 002.

4.The Director (Finance) Tamil Nadu Generation and Distribution Corporation
Limited, (Chairman of Wages Revision Committee) No.144, Anna Salai, Chennai
600 002.

5.The Secretary, Tamil Nadu Generation and Distribution Corporation Limited,
(Chairman of Wages Revision Committee) No.144, Anna Salai, Chennai 600
002..Respondents 2 to 5/Respondents 2-5/Respondents/Defendants Prayer:

Appeal filed under Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent as against the order and decree dated 09.04.2014 made in Application No.5398 of 2013 in O.A.No.542 of 2013 in C.S.No.490 of 2013 passed by the Learned Single Judge.

For Appellants : Mrs.Chitra Sampath Senior Advocate For Mr.T.S.Baskaran For 1st Respondent : Mr.R.Krishnamoorthy Senior Advocate For Mr.S.Elamurugan O.S.A.No.143 of 2014: 1.E.Sithaiyan 2.M.Nagarajan 3.B.Thiagarajan 4.M.Ashraf Ali ..Appellants V.

1.K.Chandrasekaran 2.S.V.Angappan 3.The Chairman cum Managing Director, Tamil Nadu Generation and Distribution Corporation Limited, No.144, Anna Salai, Chennai 600 002.

4.The Director (Finance) Tamil Nadu Generation and Distribution Corporation Limited, (Chairman of Wages Revision Committee) No.144, Anna Salai, Chennai 600 002.

5.The Secretary, Tamil Nadu Generation and Distribution Corporation Limited, (Chairman of Wages Revision Committee) No.144, Anna Salai, Chennai 600 002.

6.D.Ananthi 7.A.Sundararaj .Respondents Prayer: Appeal filed under Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent as against the order and decree dated 09.04.2014 made in Application No.5923 of 2013 in O.A.No.542 of 2013 in C.S.No.490 of 2013 passed by the Learned Single Judge.

For Appellants : Mr.V.Prakash Senior Advocate For Mr.K.Krishnamoorthy For 1st Respondent : Mr.R.Krishnamoorthy Senior Advocate For Mr.S.Elamurugan COMMON

JUDGMENT

(Judgment of the Court was delivered by M.VENUGOPAL,J.) The Appellants/Applicants/Third Parties have preferred the instant O.S.A.No.129 of 2014 as against the order dated 09.04.2014 in A.No.5398 of 2013 in O.A.No.542 of 2013 in C.S.No.490 of 2013 passed by the Learned Single Judge.

The Appellants/Applicants/Third parties have filed the present O.S.A.No.143 of 2014 as against the order dated 09.04.2014 in A.No.5923 of 2013 in O.A.No.542 of 2013 in C.S.No.490 of 2013 passed by the Learned Single Judge.

2.The Learned Single Judge, while passing the Common Order dated 09.04.2014, in A.Nos.5398, 5923, 5924 and 6182 of 2013 in C.S.No.490 of 2013, has, inter alia, observed that '..So far as the applicants in A.No.5398 of 2013 is concerned, they have no locus standi to seek an order to implead them as parties at this stage, as they are neither necessary parties nor proper parties to the suit' and further, opined that 'if the impleading applications filed by the members of the union are allowed, it may be nothing, but opening the flood gate and one after another at any stage, simply by stating as member of the union, impleading application could be filed, with a view to stall the democratic process of conducting Election' and resultantly, dismissed the impleading applications.

3.The Learned Senior Counsel for the Appellants/Applicants in O.S.A.No.129 of 2014 submits that the Learned Single Judge, while dismissing the impleading Application No.5398 of 2013, have committed a grave error in holding that the Appellants/Applicants were merely the members of the Union when the Appellants had been legally elected as Circle Secretary and the Branch Treasurer respectively, which fact was mentioned in the Report of the Advocate Commissioner.

4.According to the Learned Senior Counsel for the Appellants in O.S.A.No.129 of 2014, the reasoning of the Learned Single Judge that the presence of the Appellants was not necessary, because no executable decree could be passed against them was not correct, when admittedly, the 1st Appellant as elected representative is affected by the illegalities in the voters list prepared for the General Council Meeting of the Trade Union.

5.Proceeding further, the Learned Senior Counsel for the Appellants in O.S.A.No.129 of 2014 strenuously contends that the Learned Single Judge had failed to take note of the Bye-Laws of the Trade Union and if the Bye-Laws of the Trade Union were taken into consideration, then, the contention of the Appellants that retired employees are not eligible to contest for elections to any post in the

Union, would have been accepted.

6.Expatiating her submission, the Learned Senior Counsel for the Appellants projects an argument that the Appellants were never made aware of the election results that were held for various other branches and circles until the copy of the results were furnished by the Advocate Commissioner and under these circumstances, the Appellants are entitled to question the correctness and eligibility of the elected representatives from various branches and circles, if they are not in conformity with the Bye-Laws of the Union.

7.The Learned Senior Counsel for the Appellants in O.S.A.No.129 of 2014 vehemently submits that election to the General Council has been conducted, through an Advocate Commissioners appointed by this Court and in such circumstances, when the eligibility of the membeRs.who form the General Council, is disputed, it is the prime duty of this Court to decide the issue before the elections are conducted by the Advocate CommissioneRs.8.Lastly, it is the contention of the Learned Senior Counsel for the Appellants that the Learned Single Judge had omitted to consider various objections, discrepancies and obvious mistakes pointed by the Appellants that was writ large on the face of the Report of the Advocate Commissioners affecting the total number of members who would participate in the General Council Meeting.

9.The Learned Senior Counsel for the Appellants in O.S.A.No.129 of 2014 submits that Clause 4(1) of the Bye-laws of the Tamil Nadu Electricity Board Accounts and Executive Staff Union which refers to 'All the employees of the Tamil Nadu Electricity Board who are not below the age of 15 years shall be eligible to become members of the Union' etc.Further, she also points out that Clause 4(1)(a) enjoins that 'Employees who are eligible to become members according to Bye-law 4 and .are stationed at or transferred to a place where there is no branch, shall enroll to continue their membership as the case may be by remitting their subscriptions to the Central Union Finance Secretary'.

10.That apart, the Learned Senior Counsel for the Appellants adverts to Clause 4(b) of the Bye-laws of the Union, which states that 'A member of the Union who is discharged or terminated by Electricity Board shall continue to be a member, till

the State Executive Committee or General Council decides otherwise'.

11. Furthermore, she brings it to the notice of the Court that the ingredients of Clause 4(2)(a) which specifies that 'Such of those office bearers of the union who are the members of the General Council of the Union at the time of their superannuation or voluntary retirement shall be deemed as honorary members till they continue to hold such offices, subject to ratification by the State Executive Committee'.

12. The main contention advanced on behalf of the Appellants is that during the elections held in 2010, out of 61 office bearers of the General Council, 38 were already retired, but they are entitled to continue in office till the expiry of the term.

Further, during the elections held recently in the year 2013 up to the level of Circle, as per bye-laws, the election notification indicated that such of those retired would be shown as Honorary members and if they were shown as Honorary members and they had already retired, they cease to be members and they could not continue as ordinary member after the expiry of their term of office.

As such, they could not contest for election at the Branch or Circle level or in the General Council election.

13. The Learned Senior Counsel for the Appellants submits that it is not known as to how the name of a member in one branch appears in another branch and in fact, the Advocate Commissioners had submitted Interim Report during February, 2014, inter alia, stating that '..Finally, on verification it is found that only 259 branches were conducted valid elections and based on the election results for the above 259 branches, the Advocate Commissioners prepared the list of General Council members and submitting the same before this Court'.

That apart, the Advocate Commissioners Report went on to add that as per the orders passed by this Court dated 12.12.2013, based on the decision arrived at in the meeting held on 02.01.2014 and after verifying the records, they compiled a list of members for 259 branches as on 31.12.2012 and for the disputed branches namely, 37 branches separately totalling 296 branches.

14.The Learned Senior Counsel for the Appellants invites the attention of this Court that Objections to the Commissioner's Report were filed by the Appellants and they refer to fallacies and in fact, several mistakes were found.

As a matter of fact, in a branch where there are 10 members.it was shown as 15 members.Also that, the exclusion of Circle in the second Report of the Advocate Commissioners.but the inclusion of persons whose branches were excluded by the second Report of the Advocate Commissioners etc.were mentioned.

15.The Learned Senior Counsel for the Appellants in O.S.A.No.129 of 2014 submits that both the retired persons are in the helm of affairs and retired employees are not paying subscriptions and the Appellants are only interest in a free and fair election to be conducted in accordance with law.

16.The Learned Senior Counsel for the Appellants/Applicants in O.S.A.No.143 of 2014 submits that the Appellants/Applicants are proper parties to get themselves impleaded as proposed Respondents 8 to 11 in O.A.No.542 of 2013 in C.S.No.490 of 2013 on the file of this Court, because of the simple reason that the issue of right to membership was cropped up in suit in O.S.No.1911 of 2011 on the file of the XVII Assistant City Civil Court at the instance of present General Secretary where the 1st Respondent was shown as 1st Defendant and the said suit finally was dismissed on merits.

Thereupon, an Appeal was filed in A.S.No.412 of 2011 and on 20.07.2012, the Learned II Additional City Civil Judge confirmed the Judgment and Decree of the trial Court, by dismissing the Appeal.

Thereupon, the Plaintiffs, in the said suit, preferred S.A.No.1072 of 2012 on the file of this Court and the Second Appeal was admitted by this Court and the matter is pending as on date.

However, no interim orders were passed in the Second Appeal.

17.The Learned Senior Counsel for the Appellants in O.S.A.No.143 of 2014 submits that as per the consent orders passed by this Court in O.A.No.542 of 2013 and Application No.3256 of 2013 in C.S.No.490 of 2013, the election at Branch

Unit levels and Circle levels were over and now, it is in third stage and these aspects are to be brought to the notice of this Court and therefore, the Appellants are to be impleaded in A.No.5398 of 2013.

18.The Learned Senior Counsel for the Appellants contends that the Judicial Policy is not to interdict the elections and in this regard, relies on the decision of the Hon'ble Supreme Court in N.P.Ponnuswami V.

Returning Officer, Namakkal Constituency and others.1952 Supreme Court Reports 218 at special page 219, wherein it is held as follows: Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of fir importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted. 19.The Learned Senior Counsel for the Appellants/Applicants in O.S.A.No.143 of 2014 refers to Section 2(e) of the Trade Unions Act, 1926 which says that Registered Trade Union means a Trade Union registered under this Act.

Also, he refers to Section 2(g) which speaks of 'Trade dispute'.

20.That apart, the Learned Senior Counsel for the Appellants seeks in aid of the ingredients of Section 6(e) of the Trade Unions Act, 1926 which runs as follows: 6(e) the admission of ordinary members who shall be persons actually engaged or employed in an industry with which the Trade Union is connected, and also the admission of the number of honorary or temporary members as [office-bearers].[Substituted by Act 38 of 1964, S.2, for officeRs.(w.e.f.1-4-1965)].required under Section 22 to form the executive of the Trade Union. 21.In this connection, the Learned Senior Counsel for the Appellants relies on the decision of the Hon'ble Supreme Court in Bokajan Cement Corporation Employees' Union V.

Cement Corporation of India Limited, AIR2004 Supreme Court 245, wherein it is held that 'Section 6(e) of the Act does not provide for automatic cessation of membership on employee losing job. 22.It is the prime contention of the Learned

Senior Counsel for the Appellants/Applicants that in law, mere superannuation or retirement of concerned employees will not deprive them of the office bearers post in a union.

Moreover, it is the stand of the Appellants that Union is a party to the suit in O.S.No.1911 of 2011 on the file of the XVII Assistant City Civil Court and the matter is decided by the Competent Civil Court and as on date, S.A.No.1072 of 2012 is pending on the file of this Court and there is no stay in Second Appeal.

23.The Learned Senior Counsel for the Appellants/Applicants in O.S.A.No.143 of 2014 contends that bye-laws of the Union are silent on cessation of membership and Section 22 refers to 'Proportion of office-bearers to be connected with the industry' and in fact, Section 22(2) of the Trade Unions Act, refers to as follows: (2) Save as otherwise provided in sub-section (1).all office-bearers of a registered Trade Union, except not more than one-third of the total number of the office-bearers or five, whichever is less, shall be persons actually engaged or employed in the establishment or industry with which the Trade Union is connected.

Explanation.- For the purposes of this sub-section, an employee who has retired or has been retrenched shall not be construed as outsider for the purpose of holding an office in a Trade Union. 24.In effect, the submission of the Learned Senior Counsel for the Appellants is that the Trade Unions Act visualises a retired employee to continue in a Trade Union office and when once, the election process has commenced, a Court of Law cannot stall the same.

25.The Learned Senior Counsel for the Appellants cites the Division Bench Judgment of this Court dated 09.01.2014 in Writ Appeal No.2137 of 2013 (between L.Balasubramnaian and another V.

Indian Overseas Bank, Rep.

By its Chairman and Managing Director, Chennai and 2 others).whereby and whereunder, in paragraph 21, it is observed as follows: 21.Therefore, the appellants/ respondents 3 and 4, who are elected as Honorary Members in the General Council Meeting held on 17.07.2010 and 18.07.2010, with effect from the

respective date of superannuation, and acting as Office Bearers of the Union, can represent the Union, which is a majority Union, and as such, they are entitled to participate in the negotiations and discussions with the management of the fiRs.respondent-Bank, pertaining to employer-employee relationship. 26.He also refers to the order dated 24.10.2013 in Application No.4867 of 2013 and O.A.No.808 of 2013 in C.S.No.711 of 2013 (between All India Overseas Bank Employees Union, Rep.

By its General Secretary, Chennai V.

R.Shankar and 8 others).wherein, in paragraph 14, it is held as follows: 14.In the case on hand, the validity of the election of defendants 4 and 5, prior to their retirement, as Honorary Members by the General Council and the consequential ratification by the Executive Committee has not been challenged by any one of the members of the fiRs.defendant/Union or the plaintiffs till date.

Therefore, for the nonce, it should be taken that defendants 4 and 5 are valid members of the Union holding the post of Honorary Members. 27.Per contra, it is the submission of the Learned Senior Counsel for the 1st Respondent/Plaintiff that the 1st Appellant/1st Applicant (in O.S.A.No.129 of 2014) was ceased to be a Member of the Union as per Bye-Law No.7 and that the Circle Branch was managed by appointing an Organiser as per Bye-Law No.13c of the Tamil Nadu Electricity Board Accounts and Executive Staff Union and this was communicated to her and other office-bearers of the Union and the same was published in May, 2012 issue of Union Official Magazine 'Saidhi Madal'.

28.Furthermore, the 1st Appellant/1st Applicant (in O.S.A.No.129 of 2014) questioned her removal in the letter dated 28.04.2012, but her removal and appointment of new organiser was ratified in the State Executive meeting held on 16.12.2012 which was challenged by one Mr.Deivasigamani Circle Secretary, in O.S.No.1323 of 2013 on the file of the XIII Assistant City Civil Court, Chennai and the suit was dismissed for default on 06.01.2014 and therefore, the 1st Appellant is not entitled to question the election ordered to be proceeded by this Court.

29.It is the plea of the 1st Respondent/Plaintiff that from 2002 onwards, no elections were conducted to the Union and there are 7000 members in the Union and for 254 branches, elections were held and also 45 Circle elections were held and at the 3rd stage when the elections are scheduled to take place on 08.06.2014 and at this belated stage, the Impleading Applications viz., A.Nos.5398 and 5923 of 2013 filed by the Appellants herein are not maintainable in law.

30.It is brought to the notice of this Court on behalf of the 1st Respondent/Plaintiff that the Advocate Commissioners proceeded with the third stage election by inviting nominations and finalising the same on 25.05.2014 and for the election to be held on 08.06.2014, the hall was booked by remitting a sum of Rs.38,000/- and thus, the 99% of the election proceedings were completed.

31.The Learned Senior Counsel for the 1st Respondent/Plaintiff brings it to the notice of this Court that O.S.No.1911 of 2011 filed by one Arukutty and Ravichandran on the file of the XVII Assistant City Civil Court, Chennai contending that retired employees and officers are not entitled to hold the post of Office beareRs.the said suit was dismissed, by means of Judgment and Decree, dated 12.09.2011 and the same was conformed in A.S.No.1412 of 2011 by the Learned II Additional Judge, City Civil Court, Chennai and as on date S.A.No.1072 of 2012 is pending on the file of this Court.

Also that, in the said Second Appeal, no interim order was obtained.

As such, the election of retired employees and officers are legally valid and indeed, there is no prohibition either under the Bye-law or under the Trade Unions Act, 1926.

32.It transpires that the Advocate Commissioners have filed a Report in June, 2014 in O.S.A.No.129 of 2014, inter alia, stating that now the election is scheduled to be held on 08.06.2014 between 10.00 a.m.to 4.00 p.m.and for conducting elections, a hall was arranged and all other arrangements were made for conducting elections and that they have decided to videograph the entire election process including the counting of votes.

33. Apart from the above, the Advocate CommissioneRs. in their June Report, 2014, had also mentioned that in so far as the dispute regarding the inclusion of Appellant's name in the voters list, since they received two sets of election results for the same Circle, their names were not included in the final voters list and on considering the objections raised by the Appellant, it was decided to keep them as disputed votes and permit them to vote, arrangements were made to place a separate ballot box for all the disputed votes, and their votes, would be counted and separately report would be submitted to this Court for final decision regarding their eligibility.

34. It is not in dispute that the 1st Respondent/Plaintiff filed C.S.No.490 of 2013 on the file of this Court against S.V.Angappan, General Secretary, Tamil Nadu Electricity Board, Accounts and Executive Staff Union, Chennai and 3 others seeking the following reliefs: (i) For mandatory directions directing the 1st defendant to convene the General Council meeting of the Union immediately and if he fails a direction to the President to convene the General Council and State Executive Committee to frame election rules to facilitate the Union to discuss the issues on the agenda and pass appropriate binding resolutions to carry out his duties as per Bye-Law 21 r/w.

26(a).(ii) For mandatory direction to the 4th defendant directing to send the invitation to the plaintiff to represent TNEBAESU Union for discussions on wage revision and on other subjects relating to labour issues like work-load, Bonus, etc.

35. It is not out of place for this Court to significantly point out that in O.A.No.542 of 2013 and A.No.3256 of 2013 in C.S.No.490 of 2013, this Court, in order to complete the process of election, appointed Thiru.V.Bharathidasan, R.Prathap Kumar, P.Sathish and A.Saravanan as Advocate CommissioneRs. 36. The Learned Senior Counsel for the 1st Respondent/Plaintiff submits that in so far as the 2nd Appellant in O.S.A.No.129 of 2014 is concerned, he was elected as Branch Treasurer in Anna Nagar Branch which falls under Chennai west Circle and in his own Circle, the retired persons were elected as Circle Secretary and Treasurer during the election held in 10/2013 itself and he never disputed these elections in the Circle level.

37. At this juncture, this Court very relevantly points out that 'addition of parties' or 'impleading of parties' is a matter of discretion of a Court of Law.

To bring a person as one of the Respondents or to add a party in a pending proceedings is not a substantive right but one of procedure and in this regard, a Court of Law is undoubtedly to exercise his discretion in a proper manner.

The criteria for determining whether persons can be impleaded or not cannot depend solely on the question whether they have interest in the property but whether the right of persons would be affected if not impleaded.

38. The ingredients of Order 1 Rule 10 of the Civil Procedure Code envisages that a person may be added as a party to the suit in the following cases: (a) when he ought to have been joined as plaintiff or defendant, and is not joined, or (b) when, without his presence, the questions in the suit cannot be completely decided.

39. Also that, if an individual can show a fair semblance of title or interest, he can, indeed, file an application for impleadment.

A Court of Law can direct impleadment of a third party in an application/suit only in a case where he is a proper or necessary party and otherwise has an interest in the subject matter of any pending proceedings/suit.

Mere interest of parties in the fruits of litigation cannot be a real test for they being impleaded as parties.

It is to be borne in mind that impleadment of parties under Order 1 Rule 10 of the Civil Procedure Code is not a matter of law but only a matter of fact.

A Court of Law whether to allow the impleading application or not is to take into consideration of all relevant attendant facts and circumstances encircling the case.

However, for exercise of said power, the Court has to render a finding that the concerned party is a necessary or proper party.

Therefore, the addition of parties would hinge upon a judicial discretion which has to be exercised by a Court of Law in a judicious manner, based on facts and

circumstances of the case, which float on the surface.

40. On a careful consideration of respective contentions and in the upshot of qualitative and quantitative discussions mentioned supra, this Court comes to an inevitable conclusion that the Appellants are neither necessary parties nor proper parties to be impleaded in Application Nos.5398 and 5923 of 2013 in O.A.No.542 of 2013 in C.S.No.490 of 2013, based on the reason that they are only Members of the Tamil Nadu Electricity Board, Accounts and Executive Staff Union.

In fact, what remains only now is that third stage of the election, which is scheduled to be held on 08.06.2014, between 10.00 a.m. to 4.00 p.m. at Sherayans Hall, Chennai.

As such, this Court is of the considered view that when once the election process has commenced and has reached an advance stage, it cannot be stalled/stifled by any one and also that when this Court has directed the Advocate Commissioners to proceed with the election process relating to the third stage, for General Council Meeting, as per order dated 26.07.2013, at this stage, the Application Nos.5398 and 5923 of 2013 in O.A.No.542 of 2013 in C.S.No.490 of 2013 for impleadment filed by the Appellants are clearly belated and they lack bona fides.

Viewed in that perspective, the exercise of discretion by the Learned Single Judge, in not allowing the said Impleading Application Nos.5398 and 5923 of 2013 in O.A.No.542 of 2013 in C.S.No.490 of 2013, by virtue of the order dated 09.04.2014, does not suffer from any material infirmities or patent illegalities, in the eye of law.

Consequently, the Original Side Appeals fail.

In the result, the Original Side Appeals are dismissed, leaving the parties to bear their own costs.

(M.J.J.) (M.V.J.) 06.06.2014 Index :Yes Internet :Yes Sgl Note: Issue order copy on 06.06.2014 M.JAICHANDREN,J.

AND M.VENUGOPAL,J.

Sgl O.S.A.Nos.129 and 143 of 2014 06.06.2014

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