

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/09/2004

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN  
AND  
THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN.

O.S.A.No.225 of 2004  
and  
C.S.No.765 of 2004

O.S.A.No.225 of 2004

The Board of Control of Cricket in India  
rep. by its Secretary  
having its Administrative Office at  
Brabourne Stadium  
Veer Nariman Point  
Fort Mumbai, Mumbai. .. Appellant

-Vs-

1. Netaji Cricket Club  
rep. by its Secretary  
Mr.T.A.Murali  
having its Office at NO.J-8  
Baid Mehta Complex  
New No.16, Anna Salai  
Saidapet, Chennai - 600 035.

2. Tamil Nadu Cricket Association  
rep. by its Secretary  
having its Administrative Office  
at Dr.M.A.Chidambaram Stadium  
Rajaji Salai, Chepauk  
Chennai - 5.

3. Mr.Jagmohan Dalmiya  
President, BCCI  
Cricket Associatoin of Bengal  
Dr.B.C.Roy Club House  
Eden Gardens, Kolkata - 700 021.

4. Chairman/Election Officer of the  
75th Annual General Meeting  
The Board of Control of Cricket in India  
BCCI, Brabourne Stadium

Veer Nariman Point  
Fort Mumbai, Mumbai. .. Respondents

PRAYER: Original Side appeal against the order dated 28.9.2004 made in Application No.804 of 2004 in C.S.No.765 of 2004 by His Lordship Mr.Justice S.Ashok Kumar.

!For Appellant : Mr.T.R.Rajagopal,  
Senior Counsel  
^For 1st Respondent : Mr.G.R.Lakshmanan

For 2nd Respondent : Mr.P.S.Raman,  
Senior Counsel

:JUDGMENT  
(Judgment of this Court was delivered by P.D.DINAKARAN,J.)

The above appeal is posted for hearing as to admission at 9.30 a.m. in our Chambers as per the orders of My Lord, the Hon'ble Chief Justice in view of the urgency explained by Mr.T.R.Rajagopal, learned senior counsel appearing for the first defendant/appellant herein.

2. The matter was called at our Chambers at 9.30 a.m., after due notice to all the contesting respondents, including the plaintiff/first respondent herein, who is represented by Mr.G.R.Lakshmanan and the second defendant/second respondent-Tamil Nadu Cricket Association represented by Mr.P.S.Raman, learned senior counsel.

3. As it is submitted by all the learned senior counsel and the counsel on record for the respective parties that they would require considerable time to make their submissions, we heard the proceedings in the open court from 9.45 a.m.

4. The appellant is the first defendant in the suit laid by the plaintiff/first respondent herein for:

- (i) a declaration to declare that the eligible candidates who are entitled to contest for the post of President in the BCCI proposed a member of by the North Zone should be permitted to contest in the election process and also be entitled to be elected as the President and act as such for the term in the election to be conducted in the Annual General Meeting on 29th and 30th of September, 2004 at Hotel Taj Begal, Kolkata; and
- (ii) for a permanent injunction restraining the defendants, their agents, servants and men from in any manner seeking to disqualify any eligible person or persons proposed by any member of the North Zone, as representative from the said zone representing a member in the North Zone as their candidate for the Presidential Post of BCCI by virtue of such candidate not being a resident member within the zone not being a member of the said association giving him the representation,  
on an apprehension that the present incumbents to the various posts of the

first defendant/appellant-Board would prevent others contesting from different zones than the one they belong.

5. Pending the above suit, the plaintiff/first respondent herein filed Application Nos.803 and 804 of 2004 seeking an order of adinterim injunction to restrain the Chairman oblique President of BCCI from conducting the Annual General Meeting on the 29th and 30th of September, 2004 at Kolkata and direct that the said meeting be conducted under the Chairmanship of any person or persons of the stature of a retired Supreme Court Judge or High Court Judge or any other person or persons as to be named by this Hon'ble Court with absolute powers to scrutinise and approve the list of authorised representatives from member associations eligible to vote in the said Annual General Meeting of the first defendant/appellant-Board and render justice, and obtained an interim order in Application No.804 of 2004, by the impugned order dated 28.9.2004. The relevant portion of the order dated 28.9.2004 made in Application Nos.803 and 804 of 2004 in C.S.No.765 of 2004 reads as follows:

" ....11. Learned counsel for the applicant submits that there are some plans to prevent some persons from contesting the election by invoking new interpretations which have no basis under the Rules and Regulations of BCCI and also apprehends that if the third respondent is permitted to chair the Election process, irregularities are likely to occur and may result in injustice. In the sense that persons eligible to contest may be prevented. The learned counsel prays this court to appoint a retired Hon'ble Judge of Supreme Court or High Court to conduct the Election as per the rules in a free and fair manner so that justice could be rendered.

12. A perusal of records and arguments of the counsel would reveal that there is sufficient cause for the apprehension of the applicant. Ends of justice requires that a neutral authority is requested to conduct the Election in a free and fair manner. Therefore, Hon'ble Mr.Justice S.Mohan, retired

Judge of the Hon'ble Supreme Court of India is appointed as a Commissioner to conduct the Election for all the posts in the BCCI to be held at Kolkata during the Annual General Meeting on 29th and 30th September, 2004.

13. The initial remuneration is fixed at Rupees One Lakh which shall be paid by the applicant directly to the Commissioner apart from to and from expenses to be met by the applicant. Hon'ble Mr.Justice S. Mohan will scrutinize and approve the list of authorised representatives from member associations eligible to vote and conduct the election according to law. Necessary decisions with regard to qualification, nomination and conduct of election will be taken by the Commissioner."

6. Aggrieved by the said order dated 28.9.2004, the first defendant/first applicant/appellant-Board has preferred the above appeal.

7. Mr.T.R.Rajagopal, learned Senior counsel appearing for the first defendant/appellant herein submitted that there is absolutely no basis for the apprehension on the part of the plaintiff/first respondent herein that the appellant-Board shall reject the nominations of persons from other zones with respect to the office of the President of the appellant-Board. On

instructions, the learned senior counsel gave an undertaking that no nomination from whatever zone will be rejected for the ensuing election scheduled to held at 10.30 a.m. on 29.9.200 4 on the ground of residence. He further contended that the plaintiff/first respondent herein is a total stranger to the first defendant/appellant-Board and at his instance no suit whatsoever is maintainable.

8. Mr.P.S.Raman, learned senior counsel for the second defendant/second respondent submits that the Tamilnadu Cricket Association has nothing to do with the apprehension stated by the plaintiff/first respondent herein and it is admitted that though the plaintiff/first respondent herein is a member of the second defendant/second respondent association, he is not a member of the first defendant/ appellant-Board.

9.1. Mr.G.R.Lakshmanan, learned counsel for the plaintiff/first respondent herein is not disputing the fact that the plaintiff/first respondent herein is not a member of the first defendant/appellant-Board, but however, submits that in view of the undertaking given by the learned senior counsel for the first defendant/appellant-Board that no nomination from whatever zone will be rejected for the ensuing election, he is contented, as the apprehension of the plaintiff/first respondent which forms the basis for moving the Court by filing a suit for the relief as stated above is vanished in air.

9.2. Mr.G.R.Lakshmanan, learned counsel appearing for the plaintiff/first respondent herein submits before this Court that he is contented by the undertaking endorsed by the learned counsel for the first defendant/appellant herein as stated above, and therefore finding that there is nothing more to adjudicate in the main suit, C.S.No.765 of 2 004, invoking the power vested on the Court under Section 107(2) of the Code of Civil Procedure, the suit, C.S.No.765 of 2004 has been withdrawn from the file of the learned Single Judge and tagged along with this appeal and disposed of jointly.

10. We have given careful consideration to the submissions made on behalf of all the parties.

11. Taking note of the admitted fact that the plaintiff/first respondent herein is not even a member of the first defendant/appellantBoard and the undertaking made on behalf of the first defendant/ appellant-Board, we are inclined to dispose of the appeal and suit on the following terms:

(i) we are of the view that the impugned order need not be in existence and hence, the same is set aside;

(ii) the elections scheduled on 29.9.2004 at 10.30 a.m. shall be continued by the first defendant/appellant-Board strictly in accordance with the provisions of their Constitution and the rules or bye-laws framed thereunder;

(iii) the counsel on record for the first defendant/appellant herein made an

endorsement to the effect that "the appellant shall not disqualify any candidate for the post of President on the ground of residence". The said undertaking has been given by the learned Senior Counsel, Mr.T.R.Rajagopal across the bar and the same is recorded and we direct that the undertaking should be given effect to in letter and spirit without any deviation;

(iv) the first defendant/appellant herein is hereby directed to receive Hon'ble Mr.Justice S.Mohan, who was appointed as Commissioner under the order on appeal and offer due respect and all comforts during his stay at Kolkata without giving any room for the learned Judge to feel embarrassed and the learned Judge should be treated with high dignity. The first defendant/appellant herein shall pay a further sum of Rs.1,00,000/- (Rupees one lakh only) as final remuneration to Hon' ble Mr.Justice S.Mohan, apart from other incidental expenses; and

(v) in default of conditions (ii) and (iii), referred to above, if any party who is a member of the first defendant/appellant-Board is aggrieved, he is at liberty to workout his relief in appropriate proceedings before the competent court.

Both the suit as well as the appeal are disposed of accordingly. No costs. Consequently, C.M.P.No.15942 of 2004 and connected Applications are closed.

Index: Yes  
Internet:Yes

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