

C.M.P.Nos.3364,3338, 3506 & 3507 of 2020
in O.S.A.No. 59 of 2020

M.M.SUNDRESH, J.
and
KRISHNAN RAMASAMY, J.

COMMON ORDER

(Order of the Court was delivered by **KRISHNAN RAMASAMY,J,**)

These applications have been filed by the petitioner to clarify the order dated 03.02.2020 passed by this Court in O.S.A.No.59 of 2020 and C.M.P.No.2035 of 2020.

2.Mr.P.S.Raman, learned Senior Counsel appearing for the petitioner/third respondent would submit that this Court was pleased to pass an order on 03.02.2020 directing the Returning Officer to hold the Special General Body Meeting of AICF on 10.02.2020 based on the notice issued by the President of the ACIF dated 18.12.2018. This Court while passing the order on 03.02.2020, directed the Returning Officer to conduct election by duly complying the National Sports Development Code 2011.

3.He would further contend that the President of Association along with 14 other members have filed their nomination before the Returning Officer on 30.01.2020. While filling their nomination, one Mr.D.V.Sundar

met the Returning Officer and handed over the nomination papers and requested the Returning Officer, as to whether all the candidates are to be brought before him in person. However, the Returning Officer stated that it may not be required to meet the candidates since O.S.Appeal preferred by the Secretary as against the order of the learned Single Judge was to be listed on 31.01.2020 and that he would wait for the outcome of the said O.S.Appeal.

4. In the above O.S.Appeal, this Court was pleased to pass an order on 03.02.2020, directing the Returning Officer to conduct the election on 10.02.2020. The appellant made a submission before this Court that they have not filed their nominations before the Returning Officer since they have preferred the O.S.A and they made a request before this Court to grant extension of time for filing their side nominations. Since this applicant has no objection for granting extension for filing the nominations of the first respondent/appellant, this Court by way of consent of all the parties, extended time for filing nominations to the first respondent/appellant side, upto 06.02.2020 till 6 p.m.

5. When that being the case, on 05.02.2020, the Returning Officer conducted the proceedings on other issues and at about 5.30 p.m, the Returning Office returned back the nominations filed on behalf of the

President and 14 others to the said one Mr.D.V.Sundar, orally asking him to re-present the nominations as per the order of this Court dated 03.02.2020 in O.S.A.No.59 of 2020. The said order of the Returning Officer was communicated vide his Email dated 05.02.2020 at about 10.14 p.m. Further, the first respondent Secretary intimated to all the members about the order of Division Bench as well as the proceedings of the Returning Officer on 06.02.2020 at about 9 a.m. This would certainly mean that all the candidates contesting the elections across the length and breadth of the Country had to be present by 6.00 p.m on 06.02.2020.

6. In these circumstances, on 06.02.2020 once again D.V.Sundar re-presented the nominations to the Returning Officer. The Returning Officer accepted the nominations that were re-presented without any objection. However, during the scrutiny of the nominations on 09.02.2020, an objection was raised by one of the candidates belonging to the faction of the Secretary that, as per 6(4) of the Sports Code only those nominations filed by the candidates in person should be accepted.

7. Further, the learned Senior Counsel contended that the representative of the applicant and other candidates explained the circumstances leading to the order dated 03.02.2020, passed by this Court. However, the Returning Officer vide order dated 09.02.2020,

declared that the nominations filed by the applicant and its 14 candidates and 8 candidates from other side as invalid, since these 23 candidates have not filed their nominations in person on or before 06.02.2020 at 6 p.m. Further, he contended that by virtue of the order of the Returning Officer the nominations of the five persons were only accepted for 15 post and for the remaining 10 posts, the election has to be conducted on 23.02.2020 at Hyderabad.

8. Therefore, he contended that the Returning Officer ought not to have rejected the nomination filed by the applicant stating that they have not filed the nominations in person. Even on 30.01.2020, all the 15 candidates were present and they were ready to present their nominations in person. Since the Returning Officer did not insist the candidate's presence and received entire nominations through one Mr. D.V.Sundar, they had not submitted their nominations in person. The Returning Officer returned the same on 05.02.2020, to re-present the same as per the order passed by this Court. This Court passed the order on 03.02.2020 by way of consent of all the parties to the O.S.A. The said order was passed due to the reason that the first respondent/appellant herein made a submission that their side candidates should be provided an opportunity to file their nominations. It is only for this reason, this Court granted time till 06.02.2020 to file the nominations, on the side of

the respondent/appellant.

9. Therefore, he would contend that the Returning Officer need not have returned the nominations and to re-present the same in accordance with the order passed by this Court without providing sufficient time. Further, the rejection of nomination is not in accordance with the order passed by this Court. Hence the present applications have been filed to clarify the order passed by this Court dated 03.02.2020.

10. On the other hand, Mr.N.Vijayanarayanan, learned Senior Counsel for the first respondent would contend that the Returning Officer has returned the nominations in accordance with the rules and regulations of National Sports Development Code as ordered by this Court, it is only the petitioner herein made a submission that the election should be conducted as per the rules and regulations provided in the National Sports Development Code. The Returning Officer after the receipt of the nominations rejected the same since it was not filed in person.

11. In fact, the Returning Officer returned 15 nominations on 05.02.2020 itself, asking the candidate to comply with the order of this Court dated 03.02.2020 and re-present the same on 06.02.2020. Further, he would contend that there was no difficulty for the applicant

side to file the nomination in person on 06.02.2020 as they have been residing in and around Chennai. Even almost all the candidates have been residing at Chennai. Therefore, the applicant and other candidates deliberately refused to file their nominations in person before the Returning Officer. So, the Returning Officer rightly rejected the nominations since the same have not been filed in accordance with the Sports Code and therefore the proceedings conducted by the Returning Officer is just and fair and requires no interference by this Court.

12.Heard Mr. P.S.Raman, learned Senior Counsel appearing for the petitioner and Mr.N.Vijayanarayanan, learned Senior Counsel for Mr.J.Ravikumar on behalf of the first respondent.

13.This Court passed an order dated 03.02.2020, by consent of all the parties to the appeal. All the parties to the above O.S.A have agreed to the extent to grant time for filing nominations on the side of the appellant in O.S.A. Further, they have also agreed to conduct the meeting on 10.02.2020 at Hyderabad. The applicant herein has agreed to grant extension of time for filing nomination only on behalf of the respondent/appellant side as the applicant side have already filed their 15 nominations before the Returning Officer on 30.01.2020. This Court while passing the order on 03.02.2020, was quite conscious of the fact that the

time for filing the nomination was extended only to grant further time for the respondent/appellant side to file their nominations. This Court also aware of the fact that 15 nominations were already filed on the side applicant before Returning Officer on 30.01.2020. Therefore, the intention of passing the order by this Court was only to grant further time for filing nominations on the side of the respondent/appellant alone and fix the place and date of the meeting. This was on the premise that the nominations filed on the side of the petitioner are in order, at least to the extent of filing in absentia.

14. Unfortunately, a possible lack of clarity over an issue which did not arise a misconception arose fresh. Further, the parties also did not bring to the knowledge of the Returning Officer under what circumstances, this Court passed the order and what was exactly agreed by both the parties. Had both the parties brought to the knowledge of the Returning Officer all these facts, the misconstruction of the order passed by this Court would not have arisen. That, the parties have correctly understood the order can be seen from their conduct. Otherwise, nominations filed inabsentia on behalf of some of the candidates of the respondent would not have arisen. Though new nominations were received and filed on behalf of the appellant, they were once again filed without the presence of the concerned individuals. This again shows how

our order was construed. We may note that it was only the petitioner's counsel who insisted for the compliance of rules and regulations. Obviously, it was on the premise that there was no need for filing in person. It appears that the candidates did not have sufficient time to comply.

15. Therefore, we make it clear that the order passed on 03.02.2020 by this Court, by mutual consent of all the parties with the only intention to extend the time for filing nomination on the side of the respondent/appellant as stated above, keeping in mind that the 15 nomination were already filed on the side of the applicant/respondent side. After all, the object of our order with the consent of the parties is to have a contested election on merits.

16. Hence, as a consequence we set aside all the proceedings of the Returning Officer subsequent to the returning of the nominations dated 05.02.2020, including the rejection of nomination and the declaration of the elected candidates. We may note, that both the factors were represented through the counsels earlier and even now. Thus, there is no need for any individual hearing especially when things happened on a misconception. Further, nobody can take advantage of any consequence resulting in a not correct understanding of an order passed

by this Court to set right the issues between the parties and that too by consent.

17.While setting aside the proceedings of the Returning Officer, we request the Returning Officer to convene the Special General Body Meeting of AICF for conducting fresh election, by sending fresh notices for all the members along with date, time and place of the meeting and also to fix the date for filing nomination. Notwithstanding anything contained in the bye laws, the candidate shall file his/her nominations before the Returning Officer only in person by duly complying the provisions of the Sports Code. We beleive, this would set at rest the controversy. Accordingly, the order dated 03.02.2020 is clarified with the direction to conduct a fresh election for ACIF in the manner stated above. Connected civil miscellaneous petitions are closed.

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(M.M.S.J,) (K.R.J,)

18.02.2020

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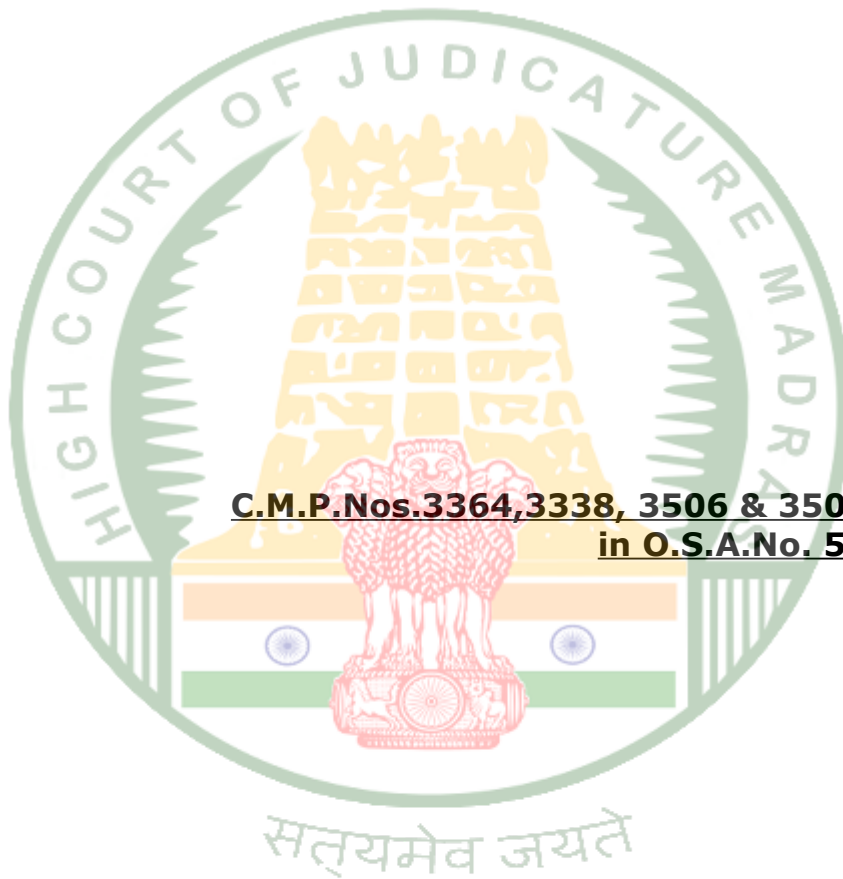
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Note: Issue Order Copy on 25.02.2020.

M.M.SUNDRESH, J.

and
KRISHNAN RAMASAMY, J.

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