

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 71 of 2018

IN THE MATTER OF:

E. Veda Bagath Singh & Ors.

...Appellants

Versus

The Madras Race Club & Anr.

...Respondents

Present:

**For Appellants: Mr. S.N. Jha, Senior Advocate assisted by
Mr. T. Mohan, Mr. Suresh Kumar and Mr. Mayank
Kshivsagar, Advocates**

**For 1st Respondent: Mr. Mohan Parasaran, Mr. R. Murari, Senior
Advocates assisted by Mr. Anil Kaushik, Mr. Alok
Kumar, Mr. Abhishek Mishra and Ms. Pavitra
Venkateswaru, Advocates**

Company Appeal (AT) No. 87 of 2018

IN THE MATTER OF:

K. Narayanan & Ors.

...Appellants

Versus

The Madras Race Club & Anr.

...Respondents

Present:

**For Appellants: Mr. T. Mohan, Mr. Suresh Kumar and Mr. Mayank
Kshivsagar, Advocates**

**For 1st Respondent: Mr. Dhruv Mehta, Senior Advocate assisted by Mr.
Anil Kaushik, Mr. Rajinder Singh and Mr. Abhishek
Mishra, Advocates**

For 2nd Respondent: Mr. Shyamal and Mr. Dhruv Pande, Advocates

ORDER

03.04.2018 One Mr. M. Muthukaruppan, petitioner (2nd Respondent herein) preferred a petition under Section 97 of the Companies Act, 2013 read with Rule 74 of the National Company Law Tribunal Rules, 2016 for obtaining the directions of the Tribunal to call of an Annual General Meeting of 'Madras Race Club' (1st Respondent herein) for the Financial Year 2015-16. The following prayer were made therein:

“5. RELIEF(S) SOUGHT:

In view of the facts mentioned above, the Petitioner prays for the following:

- 5.1 *That directions be issued by the Hon'ble Tribunal for calling of the Annual General Meeting of MRC in accordance with Section 97 of the Companies Act, 2013, for consideration of financial statements, appointment of members of the Committee of Management, appointment of statutory auditors and other matters as required in terms of the Act and the Articles of Association of MRC; and*
- 5.2 *That any other ancillary or consequential directions be made as the Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the case.”*

2. In the said petition no interim relief was sought for by the petitioner (2nd Respondent). However, when the matter was taken up on 29th August, 2017, the Tribunal after taking into consideration the affidavit filed by the 1st

respondent with regard to the individual notices sent to 640 persons whose names appeared against one or other categories viz. (i) Not having submitted an application form to be admitted to the member of the club and (ii) not having paid the requisite entrance fees, the Tribunal passed the following order :

“Counsel for Petitioner present. Counsel for Respondent also present. An affidavit on behalf of the Respondent is filed with regard to the individual notices sent to 640 persons whose names appear against one or both of the categories viz., 1) Not having submitted an application form to be admitted to the member of the club, 2) Not having paid the requisite entrance fees. The affidavit is placed on record. During course of arguments, the counsel for Respondent suggested that, in the circumstances, there is a requirement of an independent person to scrutinize the record and to decide the issue in relation to the genuineness of members of the Club to whom the notice may be issued for the purpose of AGM. The suggestion has been accepted by the Petitioner subject to the condition that the independent person should not be the member of the Club and a time limit should be fixed for taking the decision on the issue under reference. The Counsel for Respondent has suggested the name of the Retired Hon’ble Justice Mr. K.P. Sivasubramaniam and submitted that he has already sought the consent of the Hon’ble Justice. Accordingly, we appoint Retired Hon’ble Justice Mr. K.P.

Sivasubramaniam for determining the genuineness of members of the club and decide the genuineness of the membership whose names could find place in the register of members for the purpose of giving notice for AGM. This exercise shall be undertaken within four weeks subject to the convenience of the Retired Hon'ble Justice Mr. K.P. Sivasubramaniam.

Counsel for Respondent is directed to obtain a copy of this order and send it to the Retired Hon'ble Justice Mr. K.P. Sivasubramaniam for carrying out the assignment mentioned in the order. The fees of the Hon'ble Justice (Retd.) has to be decided mutually on agreed terms and the Club shall pay the same. The report shall be submitted within six weeks i.e. on or before 17.10.2017. Put up on 17.10.2017 at 10.30 A.M."

3. The Madras Race Club (1st Respondent), thereafter filed a memo, enclosing the report submitted by the Hon'ble Retired Judge of the Madras High Court. The Tribunal taking into consideration the aforesaid report, passed the impugned order dated 13th December, 2017, which reads as follows :

"Counsel for both the parties are present. Counsel for the Respondent submitted memo giving details about the Members who have not been in a position to make compliance with the requirements necessary for consideration as Members of the Club. Therefore, they have to be necessarily excluded by the Club and the notice for AGM shall only be

sent to the Members who have already complied with the requirements necessary to be considered as Members of the Club. The name of Mr. R. Ramakrishnan is proposed for appointment as Chairman of the AGM. The time and venue is also given in the memo. Counsel for the Petitioner has raised an issue that there requires an Independent Chairman. But, his submission is based on apprehensions, which is not worth of consideration at this point of time. However, an Independent Observer needs to be appointed. Accordingly, the order is as follows :

The AGM shall be convened on 26.02.2018 (Monday) or on 19.03.2018 (Monday). The venue will be at Madras Race Club, Race Course Road, Guindy, Chennai. Mr. R. Ramakrishnan is appointed as Chairman of the AGM. Hon'ble Retired Chief Justice Mr. K.P. Sivasubramaniam is appointed Independent Observer.

The Chairman is directed to convene the AGM strictly in accordance with Law and Articles of Association of the Club. The Chairman and the Independent Observer shall file the reports after one week of the AGM to this Bench. The Respondents are directed to follow the procedure prescribed under Articles of Association in its letter and spirit. The remuneration of the Chairman and Independent Observer will

be decided as per the mutually agreed terms, which shall be paid by the Club.”

4. We have heard the learned counsel appearing on behalf of the appellants and respondents. Parties have not disputed that the company petition has been filed with the prayer to direct the 1st Respondent to hold the Annual General Meeting for the Financial Year 2015-16 and the petition is pending for consideration before the Tribunal. The Tribunal has not deliberated on the issues on merit including the question as to which member is eligible or ineligible to take part in the AGM of The Madras Race Club (1st Respondent). Without deliberating on the issue aforesaid, based on the report submitted by an Hon'ble Retired Judge of the Madras High Court the impugned order has been passed without notice to the parties who will be affected. No objection was called by the Tribunal for by the Tribunal against the report of retired Hon'ble Judge about ineligibility of one or other person/member. One of the issue required to be considered is whether the report about the defaulted members is to be accepted on its face value without calling for objection from the aggrieved members. Without discussing the aforesaid issue, the impugned order has been passed by the Tribunal directing The Madras Race Club to convene the AGM in absence of 640 persons/members, which amounts to grant of final relief as has been sought for in the main petition.

5. It is a settled law that the Court or the Tribunal cannot pass an interim order, which amounts to grant of final relief without deciding the main case on merit. In this case as the interim order dated 13th December, 2017 passed by

Tribunal amounts to grant of final relief, we set aside the said order. In the effect all consequential order(s) passed by Tribunal are declared illegal.

6. The case is remitted to the Tribunal to decide the case on merit after notice to the parties who may be affected. If the report submitted by the Hon'ble Retired Judge of the Madras High Court is accepted, in such case the persons, who have been shown to have not complied with the requirements and if are debarred from taking part in the AGM be given notice if necessary by paper publication. The appeal stands disposed of with aforesaid observations and directions. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/gc