RAJAN AND TWO OTHERS
v.
SELLASAMY

COURT OF APPEAL.
S. N. SILVA, J. (PRESIDENT C/A) AND
DR. R. B. RANARAJA, J.
CALA 17/94 WITH CA 64/94.
D.C. COLOMBO 3918/SPL.
MARCH 18, 25 & 29, MAY 12, JUNE 13 AND 15, 1994.

Injunction – Requisites for an interim injunction – Judicature Act, section 54 – Rules 15(H) and 15(I) of the Constitution of the Ceylon Workers' Congress (CWC) – Meeting of the National Council and Executive Council – Legality.

The plaintiff M. S. Sellasamy who was the General Secretary of the Ceylon Workers' Congress (CWC), sued for a declaration that the meetings of the National Council and Executive Council of the CWC held on 02.01.1994 were convened contrary to the Constitution of the CWC and that all decisions taken at these meetings were null and void. He also sought interim and permanent injunctions restraining the 1st defendant who was the Vice-President (Administration) and the 2nd defendant who was the President of the CWC from implementing any of the said decisions. An enjoining order in terms of the prayer was entered on 03.1.1994 and after the parties were heard, an interim injunction.

The meeting of the National Council of the CWC was convened for 10 a.m. on 02.1.1994 by notice issued by the 1st defendant dated 22.12.1993 setting out an agenda of two items: (i) Disciplinary action against members of the Central Province Provincial Council who acted in breach of the promise given by the CWC and (ii) The exchange of letters by the President of the CWC and General Secretary regarding representation by the CWC at the annual convention of the U.N.P. held on 18.12.1993.

The Executive Council meeting was convened by notice dated 24.12.1993 for 8.30 a.m. on 02.01.1994 also issued by 1st defendant. Items 2 and 3 of the agenda of this meeting were related to the conduct of the members of the CWC who acted against the promise given by the CWC with regard to the matter in the Central Province Provincial Council and to summon the National Council to arrive at a final decision with regard to this matter.

The plaintiff admittedly received both notices. He did not protest against the decision to convene the meetings nor did he attend either of the meetings though entitled to do so.

The Minutes of the Executive Council record that the Council endorsed the decision of the President to convene a meeting of the National Council for that day and a resolution summoning an immediate meeting of the National Council was unanimously passed. The minutes also record that action should be taken against the plaintiff being the General Secretary and the eight members of the Central Province Provincial Council who acted against the CWC at that Council.

At the National Council meeting a resolution was adopted that the plaintiff be suspended from the office of General Secretary with immediate effect and that he be called upon to resign from that office within a period of 14 days. It mandated the President to take appropriate steps for the removal of the plaintiff from the office of General Secretary in the event of his failure or refusal to submit his resignation. A copy of the resolution was sent to the residence of the plaintiff at 8.30 p.m. but the messenger was not permitted to enter the premises nor was the letter accepted.

It has to be taken as established that the members of the Executive Council and the National Council received notices of the meetings and 165 out of the 197 members of the National Council did in fact attend the meeting. Rule 15(H) of the CWC Constitution give the National Council power to take disciplinary measures against the members of the Congress and Rule 15(I) stipulated a 2/3 majority for removal of an office bearer. The steps taken were not to expel the plaintiff from membership of the CWC but to remove him from the post of General Secretary.

Held:

1. The provisions of section 54(1) of the Judicature Act postulate –

   (i) The test of a *prima facie* case whereunder a serious question to be tried as to the impugned act of the defendant the commission of which is sought to be restrained and the probability that the plaintiff is entitled to permanent relief in restraining the defendant from committing the impugned act.

   The whole of the case must be considered.

   (ii) that the matters looked at thereafter are the balance of convenience and the conduct of the respective parties.

2. The legal right claimed by the plaintiff in respect of which an interim injunction is sought relates to the post of General Secretary of the CWC.

3. The plaintiff has failed to satisfy the test of a *prima facie* case. He has failed to set out any act of the defendants the commission of which would produce injury to himself. No interim injunction has been sought or obtained in respect of the resolution of the National Council which took effect after the case was filed. On the grounds relied upon by the plaintiff relating to the convening of the two meetings, the plaintiff has failed to establish a *prima facie* case that he is entitled to a judgment for permanent relief against the defendants.

4. As regards the balance of convenience, the injunction has brought the CWC to a position where it is without a General Secretary who is competent to function but is unable to take further steps to remove the General Secretary. The 1st and 2nd defendants, who have been restrained have no power or authority to expel the plaintiff from the post of General Secretary. It is the National Council which has the plenary power to take disciplinary measures against the plaintiff as General Secretary. The plaintiff has every right to appear before the National Council and place his defence if he is so minded. In the circumstances the test of the balance of convenience favours the defendants and not the plaintiff.

5. Lastly, the conduct of the plaintiff in not attending the meetings although he had due notice of them, and instead seeking immediate relief in the District Court on the basis of an alleged procedural error in convening the meeting militates against the grant of an interim injunction.

Cases referred to :

1. *Preston v. Luck* (1884) 27 Ch. Div. 497.
2. *Jinadasa v. Weerasinghe* (1929) 31 N.L.R. 33, 34.
3. *Hubbard v. Vosper* [1972] 2 Q.B. 84, 96.
4. *Bandaranayake v. State Film Corporation* [1981] 2 Sri L.R. 287.
5. *Richard Perera v. Albert Perera* (1963) 67 N.L.R. 443, 448.
6. *Gamage v. The Minister of Agriculture and Lands* (1973) 76 NLR 25.
7. *Yakkaduwe Sri Pragnarama Thero v. Minister of Education* (1969) 71 NLR 506.
8. *Ceylon Hotels Corporation v. Jayatunga* (1969) 74 NLR 443.
9. *Duchess of Argyll v. Duke of Argyll* (1967) 1 Ch. 302.
10. *Monsoon v. Tussauds Ltd.*, [1894] 1 Q.B. 671.
11. *Labouchers v. Earl of Wharncliffe* [1879] Ch. D 346.
12. *Fisher v. Keane* [1878] Ch. D. 353.
13. *Parr v. Lancashire & Cheshire Miners' Federation* [1913] Ch. D. 366.
14. *Luby v. Warwickshire Miners' Association* [1912] Ch. D. 371.
15. *Harington v. Sendall* [1903] Ch. D. 921.

APPLICATION for leave to Appeal from and Revision of the Order of the District Court of Colombo.

Romesh de Silva, P.C. with *Britto Muthunayagam* and *Palitha Kumarasinghe* for petitioners.

P. A. D. Samarasekera, P.C. with *J. Jeyakrishnan for respondent.*

Cur. adv. vult.

September 02, 1994.

S. N. SILVA, J.

The Defendant-Petitioners have filed an application for leave to appeal and for revision from the order dated 20.01.1994. Leave to appeal was granted on 23.02.1994 and it was agreed that both matters be heard and decided together.

The 1st and 2nd Defendants are Vice-President (Administration) and President respectively, of the 3rd Defendant (C.W.C.) being a registered trade union. At the time material to this appeal, the Plaintiff was the General Secretary of the C.W.C. The Plaintiff filed action seeking a declaration that the meetings of the National Council and the Executive Council of the C.W.C., held on 02.1.1994 were convened contrary to the constitution of the C.W.C. and illegally and that all decisions taken at the meetings are null and void, of no force and unenforceable. He also sought interim and permanent injunctions restraining the 1st and 2nd defendants from implementing any of the said decisions. The impugned meetings were held at Hatton on Sunday the 2nd and the action was filed in the District Court of Colombo on Monday the 3rd upon which an enjoining order was issued on the same day. The defendants filed objections together with an affidavit of the 1st defendant supported by documents. Written submissions were filed by both parties and the Learned District Judge by his order challenged in these proceedings granted the interim injunction as prayed for.

The meeting of the National Council of the C.W.C. was convened for 10 a.m. on 02.01.1994, by notice dated 22.12.1993 (document A filed in this application; P2 in the District Court) by the 1st defendant

[Vice-President (Administration)]. There are two items on the agenda as stated in the notice. They are :

(i) Disciplinary action against members of the Central Province Provincial Council who acted in breach of the promise given by the C.W.C.;

(ii) The exchange of letters by the President of the C.W.C. and the General Secretary regarding the representation by the C.W.C. at the annual convention of the U.N.P. held on 18.12. 1993.

The Executive Council meeting was convened by notice dated 24.12.1993 for 8.30 a.m. on 02.01.1994 (A5: P3), also issued by the 1st defendant. Items 2 and 3 of the agenda of this meeting were related to the conduct of the members of the C.W.C. who acted against the promise given by the C.W.C. with regard to the matter in the Central Province Provincial Council and to summon the National Council to arrive at a final decision with regard to this matter. The 1st defendant has stated in his affidavit that he issued the notices convening the meetings at the request of the 2nd defendant being the President of the C.W.C.

The Plaintiff admittedly received both notices. He has not protested against the decision to convene the meetings to any one in the C.W.C. prior to the institution of the action. He did not attend either of the meetings although he was entitled to do so by virtue of the office held by him.

Minutes of the meeting of the Executive Council have been produced by the defendants (B7: D4). It records that the Council endorsed the decision of the President to convene a meeting of the National Council for that day and that the meeting of the National Council should be held at 10 a.m. at the same venue since all members of the National Council have already been issued notices informing them of the meeting. It is recorded that the resolution summoning an immediate meeting of the National Council was unanimously passed. The minutes also record that action should be taken against the plaintiff being the General Secretary and the eight members of the Central Province Provincial Council who acted against the C.W.C. at that Council.

The resolution adopted by the National Council at its meeting have been produced by the defendants (B9). The resolution is that the plaintiff be suspended from the office of General Secretary with immediate effect and that he is called upon to resign from that office within a period of 14 days. It mandates the President to take appropriate steps for the removal of the Plaintiff from the office of General Secretary in the event of his failure or refusal to submit his resignation. A copy of the resolution had been sent to the residence of the Plaintiff at 8.30 p.m. that night but according to the affidavit of Kandasamy Dharmalingam (B13) he was not permitted to enter the residence and the security personnel at the gate refused to accept any letter from the C.W.C. The plaintiff has not filed a copy of the resolution in respect of which he has sought interim relief.

The only ground on which the plaintiff has sought to challenge the resolution is that the meeting of the Executive Council and of the National Council have not been convened according to the Constitution of the C.W.C. (P1: A3). It is submitted by the plaintiff that these meetings could be convened only by him as General Secretary. In any event it is submitted that Rule 16 (E) provides for the Executive Council to meet, except at its regular meetings, only upon a joint written requisition made by not less than 1/3rd of the members. As regards the National Council it is submitted that Rule 15 (D) provides for the National Council to meet only as required by the Executive Council or on a written requisition addressed to the General Secretary by not less than 50 or 1/5th of the membership of the Council, whichever is less. Admittedly, there have been no written requisitions as stated in these rules.

The defendants contend that from the inception, it has been the practice to convene meetings at the request of the President and that no meetings have ever been convened upon written requisition as provided for in the Rules referred above. In any event it is submitted that the ground relied on by the plaintiff relates to the manner of convening the meetings and is procedural in nature. It is submitted that the plaintiff and every member of the two bodies received notices of the meetings and that the decisions were taken unanimously at properly constituted meetings of the Executive Council and of the National Council.

As noted above, the plaintiff as General Secretary of the C.W.C. received notices (P2 and P3) of the two meetings that were convened for 02.01.1994. He did not protest at any stage prior to these meetings that the meetings have been convened in a manner that is contrary to the Rules of the Constitution. The defendants have produced a list of the persons who were present at the meetings. (B8). This list gives the name of each person, his designation in the C.W.C. or station and the signature. According to the affidavit of the 1st defendant 165 out of the 197 members attended the meeting of the National Council. It was argued by the plaintiff that there are less signatures in the attendance sheets of the meeting of the National Council. However, in reply, it has been shown that the members of the Executive Council who are also members of the National Council signed the attendance sheets only when they attended the meeting of the Executive Council. In the course of the hearing, a specific question was raised by Court as to whether the plaintiff is disputing any signature as appearing in the attendance sheets (B8). It was categorically stated that the plaintiff is not making any such suggestion. Therefore, it has to be taken as an established fact that the members of the Executive Council and the National Council received notices of the meetings and that 165 out of 197 members of the National Council did in fact attend the meeting.

Rule 15 (H) of the Constitution provides as follows:

> "The National Council shall have the power to take disciplinary measures on members of the Congress, delegates, members of the National and Executive Councils, office bearers and ex-Presidents for misconduct, wilful neglect of duty, default or any other cause".

Rule 15(I) provides that no office bearer shall be removed from office except on a resolution passed by a majority at a National Council meeting at which at least 2/3rd of the members are present.

It is clear from the documents produced by the defendants that far more than the quorum of 2/3rd of the members of the National Council were present at its meeting which is challenged in these proceedings. The resolution suspending the plaintiff and requiring him to resign and upon failure authorising the President to take steps

for his removal has been carried unanimously. Since the plaintiff is not challenging the status of the members of the Council who were present at the meeting and the fact that the resolution was unanimously carried, the only matter to be decided in these proceedings is whether he is entitled to relief by way of an interim injunction only on the ground that the meetings have not been convened as provided in the Rules of the Constitution referred above.

Having thus stated the established facts and the question at issue, I shall pass to a consideration of the legal provisions as to the granting of an interim injunction in so far as they relate to the dispute before Court. The substantive law as to interim injunctions is contained in section 54 of the Judicature Act No. 2 of 1978 as amended. This section is subject to certain variations identical with section 42 of the Administration of Justice Law No. 44 of 1973 which in turn was derived from sections 86 and 87 of the Courts Ordinance No. 1 of 1889. The applicable procedure in this regard is contained in Chapter 48 of the Civil Procedure Code, (Sections 662 to 667) as amended.

Section 54 of the Judicature Act vests jurisdiction in the District Court to grant an interim injunction in three situations as specified in sub-paragraphs (a), (b) and (c) of sub-section (1). Sub-paragraph (a) provides for an injunction to be prayed for in the plaint. That is, at the inception of the action itself, whereas, sub-paragraphs (b) and (c) provide for the grant of an injunction whilst an action is pending. In this case the injunction was sought in the plaint and the relevant provisions of section 54(1) (a) of the Judicature Act are as follows:

> "Where in any action instituted in a ... District Court ... it appears–
>
> (a) from the plaint that the Plaintiff demands and is entitled to a judgment against the defendant restraining the commission or continuance of an act or nuisance, the commission or continuance of which would produce injury to the plaintiff;
>
> .....
>
> .....
>
> the court may, on its appearing by the affidavit of the plaintiff

or any other person that sufficient grounds exist therefor, grant an injunction restraining any such defendant from–

(1) committing or continuing any such act or nuisance ..."

The words "it appears ... from the plaint that the plaintiff demands and is entitled to a judgment" and further from, the words, "on its appearing by the affidavit of the plaintiff or any other person that sufficient grounds exist therefor", demonstrate that the burden is on the plaintiff to satisfy the Court *prima facie* that he is entitled to judgment restraining the defendants from committing the act which is alleged to produce injury to the plaintiff and that there are sufficient grounds that warrant the granting of an injunction. This requirement is derived from the principles of English Common Law as stated in the case of *Preston v. Luck* [1], where Cotton, L.J. defined the requirement as follows:

"Of course, in order to entitle the plaintiffs to an interlocutory injunction, though the court is not called upon to decide finally on the rights of the parties, it is necessary that the court should be satisfied that there is a serious question to be tried at the hearing, and on the facts before it there is a probability that the plaintiffs are entitled to relief." (Ps. 505 & 506).

In the case of *Jinadasa v. Weerasinghe* [2] Dalton, J. adopted the dictum of Cotton, L.J. when he stated the requirements for an interim injunction as follows:

"The court must be satisfied that there is a serious question to be tried at the hearing and that on the facts before it there is a probability that the plaintiff is entitled to relief." (p.34).

The provisions of section 54(1) of the Judicature Act considered in the light of judicial dicta based upon antecedent legislative provisions postulate that there are two matters on which the plaintiff has to satisfy court to entitle him to interim relief by way of an injunction. They are:

(i) that, there is a serious question to be tried as to the impugned act of the defendant the commission of which is sought to be restrained;

(ii) that on the facts as disclosed in the material before court, it is probable that the plaintiff is entitled to permanent relief in restraining the defendant from committing the impugned act.

These two requirements have a basic underpinning that the court will issue an interim injunction only to support a legal right of the plaintiff a breach of which is imminent due to the impugned conduct of the defendant.

In considering these matters, the proper approach is for the Judge to look at the whole of the case. Lord Denning M. R. stated this approach in his dictum in the case of *Hubbard v. Vosper* [3] as follows:

> "In considering whether to grant an interlocutory injunction, the right course for a Judge is to look at the whole case. He must have regard not only to the strength of the claim but also to the strength of the defence and then decide what is best to be done. Sometimes, it is best to grant an injunction so as to maintain the status *quo* until the trial. At other times it is best not to impose a restraint upon the defendant but leave him free to go ahead." (page 96).

These matters that the plaintiff has to establish to entitle him to an interim injunction are put under the rubric of a "*prima facie* case". The test of a "*prima facie* case" embracing the elements stated above, is the foremost consideration applied in deciding the question of granting an interim injunction. The matters looked at thereafter are the balance of convenience and the conduct of the respective parties.

Soza, J. in the case of *Bandaranayake v. State Film Corporation* [4] after an extensive survey of the decisions of our Courts and of the Courts in England, India and the treaties on the subject summarised the approach of a Court at an inquiry in an application for an interim injunction as follows:

> In Sri Lanka we start off with a *prima facie* case that is, the applicant for an interim injunction must show that there is a serious matter in relation to his legal rights, to be tried at the hearing and that he has a good chance of winning. It is not

necessary that the plaintiff should be certain to win. It is sufficient if the probabilities are he will win. Where however the plaintiff has established a strong *prima facie* case that he has title to the legal right claimed by him but only an arguable case that the defendant has infringed it or is about to infringe it, the injunction should not be granted (*Hubbard v. Vosper*). If the probability is that no right of the plaintiff will be violated or that he will suffer no wrong such as the law recognises, then the injunction will not issue – See for instance the case of *Richard Perera v. Albert Perera* [5] and *Gamage v. The Minister of Agriculture and Lands* [6]. The case as a whole should be taken into account and the relative strength of the cases of the plaintiff and the defendant assessed (*Hubbard v. Vosper*).

If a *prima facie* case has been made out, we go on and consider where the balance of convenience lies – *Yakkaduwe Sri Pragnarama Thero v. Minister of Education* [7]. This is tested out by weighing the injury which the defendant will suffer if the injunction is granted and he should ultimately turn out to be the victor, against the injury which the plaintiff will sustain if the injunction were refused and he should ultimately turn out to be the victor. The main factor here is the extent of the uncompensatable disadvantage or irreparable damage to either party. As the object of issuing an interim injunction is to preserve the property in dispute in status *quo* the injunction should not be refused if it will result in the plaintiff being cheated of his lawful rights or practically decide the case in the defendant's favour and thus make the plaintiff's eventual success in the suit if he achieves it, a barren and worthless victory - See Bannerjee.

Lastly, as the injunction is an equitable relief granted in the discretion of the Court, the conduct and dealings of the parties (*Ceylon Hotels Corporation v. Jayatunga*) [8] and the circumstances of the case are relevant. Has the applicant come into court with clean hands? – See *Duchess of Argyll v. Duke of Argyll* [9]. Has his conduct been such as to constitute acquiescence in the violation of infringement of his rights as the

Court of Appeal in England found in *Monsoon v. Tussauds Ltd.* [10] or waiver of his rights to the injunction?

In the background of the law as stated above I wish to revert to the salient matters in the case. The legal right claimed by the plaintiff in respect of which an interim injunction is sought relates to the post of General Secretary of the C.W.C. It is to be noted, at first, that the plaintiff has no absolute rights in respect of this office. His status is that of an elected office bearer, the rights of the plaintiff in respect of that office has to be determined in terms of the Constitution of the C.W.C. It is seen that Rule 15 quoted above specifically empowers the National Council to take disciplinary measures against office bearers for misconduct, wilful neglect of duty, default or any other cause. Hence the plaintiff's rights in respect of that office are necessarily subject to the power of the National Council to take disciplinary measures against him. The resolution adopted by the National Council at its meeting held on 02.01.1994 (B9) is that the plaintiff be suspended from the office of General Secretary with immediate effect. The resolution also calls upon him to resign from that office within a period of 14 days. No interim injunction has been sought or obtained against the National Council or its members. The resolution has therefore taken effect and would remain valid unless the Court in the final judgment grants the plaintiff the declaration sought in the prayer to the plaint. No amount of restraint placed on the 1st and 2nd defendants by way of an interim injunction could remove the effect of this resolution of the National Council. Therefore, it is seen that the plaintiff's rights in respect of the office of General Secretary are impaired to a point where he is suspended from holding that office and required to resign.

The other resolution of the National Council is that in the event of the plaintiff failing to resign the 2nd defendant as President is authorised to take appropriate steps for the removal of the plaintiff. It is not alleged that the 2nd defendant has taken any such steps. In any event the plaintiff has been given a period of 14 days to consider whether he should tender his resignation. This period had not lapsed at the time the plaintiff rushed into the District Court on the very next day after the National Council adopted the resolution. In the circumstances, it has to be noted that the plaintiff has not set out any

"act" on the part of the defendant "the commission of which would produce injury to the plaintiff". This is a basic requirement to be satisfied in terms of section 54(1) (a) of the Judicature Act for the plaintiff to be entitled to the grant of interim injunction.

Considering the provisions of Rule 15H the only action the 2nd defendant could possibly take is to refer the matter of removal back to the National Council being the body vested with the power to take disciplinary measures against the plaintiff in his capacity as General Secretary. There would be nothing wrongful in such conduct in view of the resolution of the National Council. On the other hand, the plaintiff cannot indirectly stultify the resolution of the National Council in respect of which an interim injunction has neither been sought nor obtained by placing a restraint on the 1st and 2nd defendants from implementing the decisions of the Executive Council and the National Council as prayed for in prayer (b) of the plaint.

The complaint of the plaintiff relates to the manner in which the meetings of the Executive Council and of the National Council were convened. The claim of the plaintiff that only he as the General Secretary could issue a notice convening a meeting, is not supported by any Rule of the Constitution. Rule 19 (E) which provides for the office of General Secretary does not vest in that office the power to issue notice convening meetings. The General Secretary is designated the "Chief Executive Officer ...", but to claim that the office carries with it an exclusive power to issue notices convening meeting is to overstate power of the office beyond its limits. The General Secretary could then hold the entire organisation to ransom by not issuing notices. The issuing of a notice is a purely administrative act. The only requirement should be that it is issued to the persons who are entitled to attend the meeting and contains particulars such as the time and venue of the meeting and its agenda. There is no complaint as regards any of these matters. In the absence of any specific provision in the Constitution as to who may send such a notice, a notice as in this case, issued by the Vice President (Administration) at the instance of the President, appears to me, to be proper. Any objection as to the notice convening the meeting should appropriately be taken at the meeting itself and the members could then have discussed the matter and decided upon

such objection. This should specially be so considering that Rule 25 provides that on any question of interpretation of the Constitution or on any matter not provided for therein the decision of the Executive Council shall be final subject to review by the National Council.

The right if any, of the plaintiff was to have objected to the manner in which the meeting was convened before the proper forum namely, at the meeting of the Executive Council. He has denied to himself that right by not attending the meeting although he was notified of the meeting in time. None of the defendants have denied to the plaintiff the right to take such objection before the meeting of the Council.

The other limb of the plaintiff's complaint is that meeting of the Executive Council, not being one of the regular meetings could only have been convened upon a requisition as provided in Rule 16 (E). The first part of Rule 16(E) cuts across this argument. It provides that the "Executive Council shall meet once in six months or more often if deemed necessary; or on a joint written requisition made by not less than one third of its members ...". The provision for the Council to meet if deemed necessary leaves the matter of convening meetings flexible, as it necessarily should be, in a functional body as the Executive Council. Hence it would be open for the highest office bearer of the organisation, its President, to consider it necessary to convene a meeting of the Council. The argument places a restriction on the meeting of the Council which is not warranted by the Constitution. As observed in relation to the previous limb of the plaintiff's complaint, this too is an objection which the plaintiff should have raised before the Council at the meeting and sought a ruling.

The complaint of the plaintiff with regard to the meeting of the National Council is made on a similar basis, as stated above. In terms of Rule 14 (A), the "Congress shall be under the management and direction of the National Council ... ". It is the highest executive organ of the C.W.C. The complaint of the Plaintiff is that except in the case of regular meetings, it could meet only upon a requisition made by the specified number of members as provided in rule 14(D). In this instance too the first part of the Rule cuts across the argument of the plaintiff. It provides that the "National Council shall meet as often as required by the Executive Council ...". It is seen from the facts as

stated above that the Executive Council that met early on the 2nd ratified the decision of the President to convene the National Council and decided that the Council shall meet immediately since notices had been sent to all its members. Hence, there is no irregularity as to the convening of the meeting. In any event, the observation made in the preceding paragraph that the objection, if any, should properly have been taken at the meeting, applies in this instance too.

Learned District Judge has observed that the convening of the meeting by the 1st defendant without a requisition, as provided, is *prima facie* contrary to the Constitution, without a specific examination of the provisions of the Constitution. He has also opined that if the basic rights of a member are removed by any illegal decision, the Court has a duty to grant him relief. He has failed to appreciate the distinction between the rights of a member and that of an office bearer. In this instance what is at issue are the rights of the plaintiff as an office bearer. Learned District Judge has failed to take note of the plenary power vested in the National Council by Rule 15 (H) to take disciplinary measures against any office bearer. As regards the failure of the plaintiff to raise the objection at the respective meetings of the Councils, learned Judge has observed that if the plaintiff went to the "trade union" to notify his objection, the decision against him would have taken effect and he would have been deprived of his right to obtain an injunction from Court. I have to note that this approach is not correct. The objection of the plaintiff relates to a matter of procedure relating to the convening of the meetings. The appropriate forum and time to raise these objections are the meetings of the respective Councils. He has failed to take into account the provisions of Rule 25 regarding the interpretation of the Constitution. Learned Judge has also failed to consider that the plaintiff by wilfully absenting himself from the meetings denied to himself the right, if any, to object to the manner in which the meetings were convened and that *prima facie* there is no cause of action that can be pleaded against the 1st and 2nd defendants. Learned Judge has also refused to accept the position of the defendants that 165 out of the total number of 197 members of the National Council attended the meeting of the National Council and that the resolution against the plaintiff was carried unanimously. He has failed to note that the

only material as regards the meeting, the attendance by members and resolutions passed, came from the defendants. The plaintiff did not attend the meetings and did not adduce any evidence as to the proceedings at the meetings. The Learned Judge has refused to accept the averments of the 1st defendant's affidavit in this regard without any evidence to the contrary from the plaintiff. As noted above, at the hearing before us learned President's Counsel for the Plaintiff specifically conceded that the plaintiff is not disputing any signature on the attendance sheets B8. There is no complaint that the members of the respective Councils did not receive notices of the meetings. Similarly, there is no complaint that persons other than those entitled to, attended these meetings. The plaintiff has not adduced by way of evidence any affidavit or document from any member of either of the Councils, supportive of his complaint as to the manner of convening the meetings. This supports the position of the defendants that the decision against the plaintiff was taken unanimously. For the reasons stated above I hold that the findings of the learned District Judge regarding the matters stated above, being crucial to a right decision in the case, have been made without any basis.

Learned President's Counsel for the plaintiff submitted several judgments of the Chancery Division in England in support of his submission that a member of a trade union or such other body is entitled to obtain relief by way of an injunction in respect of disciplinary action taken against him by the trade union or such other body. The cases of *Labouchers v. Earl of Wharncliffe* [11] and *Fisher v. Keane* [12] deal with situations where the Court found that the decisions of expulsion have been made without proper inquiry and contrary to the ordinary principles of justice. In the first case the rule which permitted expulsion required that such expulsion should be preceded by an inquiry. In the second case the decision has been made without due notice to the person, of the intention to proceed against him. These two cases have no bearing on the facts of the case before us. Firstly it is to be noted that there has been no expulsion from membership in the present case. Secondly there is no complaint of a lack of a proper inquiry. In any event it is doubtful whether the relevant rule dealing with disciplinary measures is based on the premise that there should be a proper inquiry. Observations

made by Their Lordships as to proper conduct on the part of a "body of English gentlemen" are not appropriate to the facts of this case. The cases of *Parr v. Lancashire & Cheshire Miners' Federation* [13] and *Luby v. Warwickshire Miners' Association* [14] deal with situations where the expulsion from membership was held to be *ultra vires*. There is no question here of the resolution which is impleaded in this case being considered as *ultra vires*. The plaintiff has not made any complaint on that ground. Finally, the case of *Harington v. Sendall* [15] deals with a situation of an expulsion of a member of a club since he dissented in a resolution to raise the amount of the subscription payable by the members. It was held that the resolution to increase the subscription could not have been validly passed. It is thus seen that the authorities relied upon by the plaintiff have no bearing on the facts of this case. The complaint of the plaintiff here is as regards the manner in which the respective meetings were convened. From the preceding analysis it is seen that there is no merit in this complaint.

It has to be observed that the plaintiff was aware that his conduct as the General Secretary of the C.W.C. will be discussed at the meetings. In paragraph 21 of the plaintiff's affidavit he has stated that the letters P4 and P5 indicate that certain important decisions would be taken at the meetings of the two Councils that had been convened. If so, the proper course on his part would have been to attend the meetings and place his version of the events for consideration by the members at the respective meetings. Instead, he avoided attending the meetings and got ready to institute proceedings in the District Court even prior to the meetings being held. This seems obvious considering the fact that the action was filed on the very next day in the District Court.

For the reasons stated above I hold that the plaintiff fails in his application upon a consideration of the criteria or tests as stated above, that pertain to the grant of an injunction. Firstly, the plaintiff has failed to satisfy the test of a "*prima facie* case". He has failed to set out any act of the defendants the commission of which would produce injury to himself. No interim injunction has been sought or obtained in respect of the resolution of the National Council which has now taken effect. It is also seen that on the grounds relied upon

by the plaintiff relating to the convening of the two meetings, the plaintiff has failed to establish a *prima facie* case that he is entitled to a judgment for permanent relief against the defendants.

As regards the balance of convenience, it is seen that by the injunction granted the C.W.C. has been brought to a position where it is without a General Secretary who is competent to function but is unable to take further steps to remove the General Secretary. This amounts to a serious fetter on the conduct of a large trade union. It is to be noted that the 1st and 2nd defendants, who have been restrained have no power or authority to expel the plaintiff from the post of General Secretary. It is the National Council which has the plenary power to take disciplinary measures against the plaintiff as General Secretary. The Plaintiff has every right to appear before the National Council and place his defence if he is so minded. In the circumstances, the test of the balance of convenience favours the defendants and not the plaintiff.

Lastly, the conduct of the plaintiff in not attending the meetings although he had due notice of them, and instead seeking immediate relief in the District Court on the basis of an alleged procedural error in convening the meetings militates against the grant of an interim injunction. For these reasons I allow this appeal and set aside the order of the learned District Judge dated 20.01.1994. The application of the plaintiff for an interim injunction as prayed for in paragraph B(1) of the prayer to the plaint is refused. The defendants will be entitled to the costs of the inquiry before the District Court and to a sum of Rs. 5000/- as costs of this appeal and application in revision.

DR. R. B. RANARAJA, J. – I agree.

Appeal allowed.
Application for interim injunction refused.