IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 42

Originating Summons No 844 of 2021

Between

Gunasegarn s/o Sinniah

… *Plaintiff*

And

Singapore Indhia Kalaingyar Sangam
(Singapore Indian Artistes' Association)

… *Defendant*

Originating Summons No 1114 of 2021

Between

Rajasekaran s/o K S Maniyam

… *Plaintiff*

And

Singapore Indhia Kalaingyar Sangam
(Singapore Indian Artistes' Association)

… *Defendant*

JUDGMENT

[Unincorporated Associations and Trade Unions — friendly societies — membership — expulsion]

Gunasegarn s/o Sinniah
v
Singapore Indhia Kalaingyar Sangam (Singapore Indian Artistes' Association) and another matter

[2022] SGHC 42

General Division of the High Court — Originating Summonses Nos 844 and 1114 of 2021)
Choo Han Teck J
16 February 2022

28 February 2022 Judgment reserved.

Choo Han Teck J:

1 The defendant is a society set up in August 1970 by a group of Indian artistes with the objective of uniting Indian drama, dance, music, and other artistes in Singapore to raise cultural, artistic and social standards. The defendant is governed by its Rules and Regulations, which, I am told by counsel, operate as the society's constitution ("the Constitution").

2 The plaintiffs in Originating Summonses Nos 844 and 1114 of 2021 were members of the defendant. They were both expelled by the defendant's Management Committee ("MC") on 9 June 2021 and 23 July 2020 respectively. Both plaintiffs are seeking a declaration that the defendant's decision to expel them is null and void, and for an order that the defendant restores them as

members of the defendant. The circumstances leading to their expulsion are similar.

3 Mr Gunasegarn, the plaintiff in Originating Summons No 844 of 2021, says that he had been a member of the defendant since 1984 and also served as the Secretary of the MC in 2015. In early 2015, Mr Gunasegarn approached a veteran artist, Mr Jayasambok, to ask him if he would like to join the defendant. Mr Jayasambok agreed, filled out the defendant's application form, and made payment of the sum of $105 to Mr Gunasegarn, which comprised of an "entrance fee" of $5 and Life Member fees of $100.

4 Mr Gunasegarn says that on or about May 2015, during an MC meeting, he handed the membership fees of $105 to the President of the defendant at that time, Mr Re Somasundram. In June 2015, Mr Gunasegarn relinquished his position as the Secretary and MC member. He assumed that the defendant would follow up with Mr Jayasambok's application.

5 On 13 September 2020, Mr Gunasegarn received an email from the new secretary of the defendant in which he was told that Mr Jayasombok's membership could not be confirmed. Mr Gunasegarn sought clarification from the defendant and explained that he handed Mr Jayasombok's application form and membership fees to Mr Re Somasundram in 2015. Mr R Somasundram denies receiving any form or money from Mr Gunasegarn. The minutes of the MC meeting in 2015 do not support Mr Gunasegarn's account.

6 The defendant takes the view that Mr Gunasegarn's purported recruitment of Mr Jayasambok was in breach of Rule 4(iii) and Rule 5(i) of the defendant's Constitution —

(a) Rule 4(iii) of the defendant's Constitution provides that "[e]very applicant for membership shall be proposed and seconded by two existing Life or Ordinary members in the prescribed form". There were no proposers or seconders for Mr Jayasambok's application.

(b) Rule 5(i) of the defendant's Constitution provides that "[a]n entrance fee of $5/- shall be payable within two weeks of election to membership". The defendant says that this means that memberships were only required *after* the application was approved by the MC. By collecting Mr Jayasambok's membership fees before he was admitted as a member by the MC, the defendant says that Mr Gunasegarn contravened the Constitution and put the defendant's reputation at stake in not accounting for Mr Jayasambok's membership fees.

On those grounds, the defendant sent Mr Gunasegarn a letter on 9 June 2021 informing him of his expulsion.

7 Mr Rajasekaran, the plaintiff in Originating Summons No 1114 of 2021, was expelled for similar reasons. Mr Rajasekaran also claims to be a member of the defendant since 1984, serving on numerous MCs from 1986 to 2000 and as the President of the defendant from 2012 to 2014. Thereafter, Mr Rajasekaran served as an Advisor from 2014 until he was expelled in 2020.

8 For the period of 2018 to 2020, the defendant's elected President was Mr Gunaseelen. Mr Rajasekaran says that during this period, Mr Gunaseelen removed at least 3 members from the MC and replaced them with individuals who were related to Mr Gunaseelen. Over time, more MC members resigned and their replacements were appointed by Mr Gunaseelen. Mr Rajasekaran says that many decisions of the current MC members were questionable and he

opposed proposals that he felt appeared biased. Mr Rajasekaran says that this resulted in him falling out of favour with Mr Gunaseelen.

9 Sometime in 2020, Mr Rajasekaran approached Ms Kenwyn Kavasgar ("Ms Kenwyn"), an accountant and art enthusiast, and suggested that she joins the defendant. Ms Kenwyn agreed and filled in the online application of the defendant. On 12 February, Mr Gunaseelen followed up with Ms Kenwyn and confirmed that the defendant will be contacting her to "fulfil membership protocols soon". Mr Gunaseelen sent a message in the defendant's WhatsApp group to the defendant's Treasurer, Mr Devadass, informing him that Mr Rajasekaran and one Ms Rani will be collecting the membership fee from Ms Kenwyn as a new applicant.

10 However, due to the pandemic, Mr Rajasekaran was not able to meet Ms Kenwyn until 4 June 2020, on which he collected the sum of $105 from Ms Kenwyn for membership fees. On the same day, Mr Rajasekaran informed the Treasurer Mr Devadass that he collected the membership fees for Ms Kenwyn. Mr Devadass told Mr Rajasekaran that the membership application form had been changed and for him to hold on and not proceed with the membership recruitment yet, as advised by the President.

11 Mr Rajasekaran did not want to hold on to the $105 and transferred the sum to another MC member, Ms Manimala, who said that she knew Ms Kenwyn. However, on the same night, Ms Manimala transferred the sum of $105 back to Mr Rajasekaran and told him that she was instructed by the President to return the money.

12 On 8 June 2020, the defendant emailed Mr Rajasekaran, stating that Mr Rajasekaran had contravened the defendant's Constitution by collecting

membership fees from Ms Kenwyn before the MC approved her application and for falsely representing that Ms Kenwyn's membership has already been approved. The defendant requested Mr Rajasekaran to show cause as to why action should not be taken against him for that.

13 Subsequently, the defendant sent Mr Rajasekaran several more show cause emails concerning Mr Rajasekaran's purported recruitment of Ms Kenwyn as well as another matter concerning Mr Rajasekaran's allegation that there were unapproved "ghost members" in the defendant's WhatsApp chat. On 23 July 2020, the defendant expelled Mr Rajasekaran and removed him from the defendant's WhatsApp chat.

14 Both plaintiffs take the position that their expulsions were wrongful and in contravention of Rule 9(i) of the defendant's Constitution. They thus seek a declaration from this court to annul their expulsion orders. The core contention in both cases concern the interpretation of Rule 9 of the defendant's Constitution, which is reproduced below:

> 9. Expulsion:
>
> (i) member whose conduct is found by the Management Committee to be prejudicial to the interests of the Association shall be informed accordingly and be requested by the Management Committee to resign or be asked to explain in writing why he /she should not be expelled. If he/she does not wish to do so within fourteen days of such request or if his/her explanation is not satisfactory to the Committee, he/she shall be expelled by a resolution carried by a majority of 3/4 of the members present.
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> (ii) member expelled under Rule 9(i) shall have the right to appeal to the next Annual General Meeting provided that the member so expelled gives notice of such appeal to the Hon. Secretary in writing within 21 days of his/her expulsion.

> (iii) At the Annual General Meeting, if two-thirds (2/3) of the "voting" members vote in favour of expelling a member whose appeal has been brought forward to the meeting, he/she shall be expelled from the Association and no further appeal will be entertained at any other meetings to change the earlier decision.

15 The plaintiffs say that the phrase "resolution carried by a majority of 3/4 of the members present" in Rule 9(i) of the defendant's Constitution refers to 75% of the members present at the Annual General Meeting ("AGM") of the defendant. On this interpretation, the plaintiffs say that their expulsions were null and void because no resolution for their expulsions had been passed at any Annual General Meeting. The plaintiffs further say that even if the phrase "majority of 3/4 of the members present" refers to the 75% majority at an MC meeting, there was no resolution passed by the MC to expel them.

16 The defendant's defence in both cases is that the phrase "3/4 of the members present" in Rule 9(i) of the defendant's Constitution refers to 75% of the members present at an MC meeting. The defendant says that the preceding sentence "if his/her explanation is not satisfactory to the Committee" suggests that the resolution to expel must likewise refer to the MC's resolution. The defendant also says that the MC has wide discretionary powers under the Constitution, citing Rule 4(v) which provides for the MC's power to refuse membership to any applicant without assigning any reasons, and Rule 5(i) which provides for the MC's power to cancel membership if the entrance fee of $5 is not paid. Lastly, Miss Devi, counsel for the defendant, submits that it would be incongruous if the expulsion of a member requires 75% majority at an AGM when matters as grave as dissolution only requires the consent of 60% members under Rule 31. She further argues that it could not have been contemplated that an erring member could continue as a member, possibly continuing his misconduct for a whole year until the next AGM, had his

expulsion been made just after the previous AGM. Of course, conversely, should a member be wrongfully expelled by the MC, it would be harsh for him to have to wait a full year to appeal to the next AGM.

17 I am inclined to agree with Miss Devi's interpretation that the 75% requirement refers to 75% of the MC present and not to 75% of the AGM. But I agree with Mr Ranjit that the defendant has not shown proof that the expulsion orders in both cases were passed by resolutions supported by 75% of the MC. On that basis alone, the expulsion orders ought to be declared invalid and set aside, and I therefore declare that they be set aside.

18 My order may not solve the entire problems concerning discipline and membership in the defendant because it is obvious that the Constitution needs to be revised and more clearly and comprehensively provide for such matters. Furthermore, there seems to have been an absence of proper hearing in which the plaintiffs could have presented their side of the case and their evidence disputing the charges against them.

19 It would be in the interests of the defendant to mediate an amicable settlement so far as the plaintiffs are concerned if it is to continue its high social aim of promoting art and artistes. This court is not in a position to resolve the fundamental problems that gave rise to the two applications. Justice may not have been complete in this case, but courts cannot always do justice because they do not have unlimited powers, as they are sometimes imagined to have. Our work is mainly to decide which side has presented the more plausible case. We examine what evidence there is, and what evidence is lacking. The courts cannot confer on parties what they are not entitled to by law, nor can we cause

deprivation to anyone unless permitted by law. And I certainly cannot rewrite the Constitution for the defendant.

20 The best interpretation may therefore not always achieve a just result. It is obvious that the Constitution of the defendant is neither clear nor adequately drawn up. The inherent problem may be insoluble as in this case. But sometimes a solution can be found outside rules and regulations, outside the law — and be found, instead, in the idea known as sportsmanship. Sportsmanship can turn losers into winners, just as poor sportsmanship can turn winners into losers. Sportsmanship may therefore find justice in places that the law cannot reach. This case may still have a happy ending if the parties can accept that the rules have not been clearly drafted, and work together to have a clearer set of rules. Membership fights such as this run against the spirit of social and cultural societies such as the defendant.

21 Towards that end, I direct that each party is to pay its own costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Singh Ranjit and Ravleen Kaur Khaira (Francis Khoo & Lim) for the plaintiffs;
Haridas Vasantha Devi (Silver International Chambers LLC) for the defendant