

Mathi Alegen s/o Gothendaraman v The Tamils Representative Council Singapore and Others
[2002] SGHC 310

Case Number : Suit 1519/2001, 800/2002, 801/2002
Decision Date : 30 December 2002
Tribunal/Court : High Court
Coram : Tay Yong Kwang JC
Counsel Name(s) : Liew Teck Huat (Niru & Co) for the plaintiff; Imran Khwaja and Christine Lee (Tan Rajah & Cheah) for the defendants
Parties : Mathi Alegen s/o Gothendaraman — The Tamils Representative Council Singapore; Pandiyan Vellasami; Stamford Press (Pte) Ltd; S Moganaruban

Judgment

GROUND OF DECISION

1. These three actions are closely related in their facts and should have been consolidated but were not. As the second and the third actions are essentially the sequels to the first action, I decided to try all three as one consolidated action so as to obviate repetition of evidence.

Suit No. 1519 of 2001

2. This was commenced on 30 November 2001. The Plaintiff is and was at all material times a member of the First Defendant ("the TRC"), an unincorporated association registered under the Societies Act. The TRC is an umbrella body to which some Indian organizations are affiliated. The Second Defendant was at all material times the General Secretary of the TRC.

3. The TRC's Constitution sets out the aims and objects of the organization which are all directed towards the safeguarding and the promotion of the interests of the Tamil speaking community and their language. Rule 12 of the Constitution places the administration of the TRC in the hands of a Management Council ("the MC") which is elected biennially. Under Rule 13, the MC is directed to meet at least once every month and notice of MC meetings is to be given not less than seven days before the meetings. Rule 14 provides that the General Secretary is to prepare the agenda and maintain the minutes of the MC and of the Annual General Meeting ("AGM") and the Extraordinary General Meeting ("EOGM").

4. The Plaintiff was elected as one of two Deputy General Secretaries of the TRC at the AGM held on 23 July 2000. He would therefore have held such office in the MC until the next AGM in 2002. However, at a MC meeting held on 15 February 2001, the Deputy President (S Moganaruban, the Second Defendant in Suit No. 801 of 2002) attempted to remove him from his office despite the fact that such intention to remove him was not listed as an item in the agenda for that MC meeting. The Plaintiff was "charged" with not showing proper respect to the President of the TRC and to the Chairman of the MC meetings. He was also accused of being disruptive at MC meetings. This action took the Plaintiff completely by surprise. He was not given a reasonable opportunity to defend himself. The motion to remove him from office was put to a vote but was not carried as the requisite two-thirds majority vote was not achieved.

5. The Plaintiff averred that the above attempt to remove him from office was invalid and ineffective as it was ultra vires the Constitution. He alleged that the motion to remove him was not in the agenda for that meeting and he did not have seven days' notice of it in any event. There was also no formal charge produced so that he could be informed precisely of the case he had to meet. He was not told of the provision of the Constitution under which he was charged or was being dealt with and was not accorded a reasonable opportunity to defend himself. He averred further that the said attempt at removing him from office was made mala fides.

6. Since the MC considered a two-thirds majority vote was necessary to remove the Plaintiff from office, he averred that the motion must have proceeded under Rule 18.1 of the Constitution which provides:

"18. EXPULSION OF MEMBERS

18.1 Any member whose conduct is in the considered opinion of the MC prejudicial or contrary to the interest of the Council, shall be requested to resign or be asked to exculpate himself in writing. If the exculpatory statement, considered in the sole discretion of the MC exercised in good faith, is unsatisfactory, the member shall be expelled by resolution carried by a majority of the two third of the MC voting at the meeting at which the resolution is moved. Any member so expelled shall have the right to appeal to the next AGM."

7. On 16 February 2001, the TRC wrote to the Plaintiff and sought to expel him from his office under the said Rule 18.1. The letter stated five charges against him and asked him to show cause by 22 February 2001 why he should not be expelled from the MC. The Plaintiff responded in writing on 20 February 2001.

8. On 1 March 2001, a MC meeting was held. He attended the MC meeting but left before the vote was taken. He was informed by a letter dated 7 March 2001 that he had been expelled from his office of Deputy General Secretary under the above-mentioned Rule 18.1. He averred that the removal was invalid and ineffective as it was ultra vires the TRC Constitution and was also made mala fides.

9. On 25 October 2001, a notice of AGM to be held on 2 December 2001 was sent to all members of the TRC. The Annual Report for 2000 was one of the documents attached to this notice of AGM. The said Annual Report stated that the Plaintiff had "ceased" to hold the office of Deputy General Secretary on 1 March 2001 and his office was "vacant". The Plaintiff received the notice and the documents attached thereto as a member of the TRC.

10. On 19 November 2001, the Plaintiff wrote to the TRC stating he considered himself a duly elected Deputy General Secretary and asked the TRC to confirm that he still held that office and remained a member of the MC and that such confirmation be made by circular to all members of the TRC prior to the AGM scheduled for 2 December 2001. The TRC refused to do so and the Plaintiff therefore had "to commence these proceedings to protect his name and reputation and rectify the wrongs that have been done to him, in particular, the wrongful expulsion from his duly elected office" (paragraph 25 of the Amended Statement of Claim).

11. The Plaintiff further averred that the Annual Report for 2000 was published by the TRC and/or the Second Defendant (the General Secretary) and that it contained defamatory statements about him. At page 9 of the Annual Report, it was stated:

| "TITLE OF OFFICE | NAME |
|--------------------------|--------------------------------------|
| Deputy General Secretary | Mathi Alegan (ceased wef 1.3.2001)". |

At page 69 of the same, under the heading "Management Council for the Period 2000-2002", the following appeared:

| "S/NO | NAME |
|------------|------------|
| Dy Gen Sec | (vacant)". |

12. The Plaintiff averred that the words quoted above meant that he had accepted the office in question for a two-year term but had been removed before that for serious misconduct or that he had irresponsibly resigned or otherwise relinquished his office before the expiration of his term to the detriment of the interest and well-being of the TRC. The words were also alleged to mean that he was a person who could not be relied on or trusted to act in the best interest of the TRC in particular or the Tamil community in general and that he was incompetent, irresponsible, had the propensity to challenge the authority of the MC without basis and was therefore unfit to be a member of the MC. He also pleaded that the words complained of bore the said meanings by way of innuendo. The President, the Deputy President, the General Secretary and other officials of the TRC had disseminated false information to the members of the TRC that he was a disruptive influence and had been acting contrary to the best interests of the TRC. The members of the TRC would therefore have concluded that the allegations of misconduct had been proved to be true and that he had been removed for such misconduct in proper proceedings taken out against him.

13. By letters dated 30 November 2001 sent by courier, by AR registered post and by hand, the Plaintiff, through his solicitors,

demanded that the TRC and the Second Defendant retract the offending words immediately, apologize, undertake not to repeat the same and compensate the Plaintiff by way of damages. The Defendants did not comply with the Plaintiff's demands.

14. The Plaintiff therefore claimed:

- a. an order quashing the decision of the MC of 1 March 2001 removing him from office under Rule 18.1 of the Constitution or otherwise;
- b. a declaration that he was not removed from office by the MC on 1 March 2001 and continues to hold the office;
- c. damages for libel against the TRC and/or the Second Defendant;
- d. aggravated damages against the TRC and/or the Second Defendant;
- e. exemplary damages against the TRC and/or the Second Defendant;
- f. an injunction to restrain the TRC and/or the Second Defendant, their servants or agents or howsoever otherwise, from further publishing or causing to be published the same or similar defamatory words;
- g. costs.

Suit No. 800 of 2002

15. This action was commenced on 8 July 2002. Here, the Plaintiff sued the TRC, the General Secretary and Stamford Press (Pte) Ltd in respect of an article appearing in the January 2002 issue of the Peravai, the official publication of the TRC. The General Secretary was the editor of that issue and Stamford Press (Pte) Ltd was the printer. At page 14 of that issue, there was an article in English entitled "TRC Legal Action". The Tamil version appeared at page 7. The article read:

"TRC LEGAL ACTION

The former Deputy General Secretary, MR MATHI ALEGEN s/o Gothendaraman has taken legal action against the Tamils' Representative Council – a letter of demand was served two days before the AGM.

One day before the AGM, the law firm Messrs Niru & Co. issued a Writ for wrongful expulsion of the member.

The General membership decided to request the lawyers to convince their client to withdraw the legal action in the interests of the Tamil community – In the alternative, it was agreed that the Council would defend the action. Mr Imran of Tan Rajah & Cheah have been appointed to act in this matter.

A high level Committee has been formed to handle the issue."

16. The Plaintiff averred that the article defamed him as it meant that he was expelled from membership of the TRC (as opposed to the MC), that he had acted and continued to act in a manner inconsistent with the interests of the TRC and the Tamil community in Singapore, that he was a person with a dishonest or otherwise defective character unfit for serving the TRC and/or the Tamil community here and that he acted in bad faith by making a demand an unreasonable two days before the AGM and by commencing legal proceedings an unreasonable one day before the AGM with a view to putting unfair pressure on the TRC and the MC with the knowledge that nothing could be done in so short a time. It also meant that his expulsion was warranted on the facts and that the TRC had therefore decided to defend the action. He also pleaded innuendo in that many members of the TRC and of the Tamil community knew that the TRC had purported to remove him from office on 1 March 2001 for alleged misconduct and would therefore conclude, on reading the article, that his misconduct must have been so

bad and severe that it warranted his expulsion from membership of the TRC as well.

17. The Plaintiff, in seeking aggravated damages from the Defendants for their reckless and unreasonable conduct both before and after the publication of the article, relied (among other things) on the Defendants' denials that the article was defamatory of him and their attempts at justifying the article. He also pleaded that the January 2002 issue of the Peravai was published without licence from the Ministry of Information and the Arts ("MITA") and that it was published recklessly and in great haste to maximize the damage to him.

18. He claimed aggravated damages for libel, an injunction and costs against all three Defendants.

Suit No. 801 of 2002

19. This action, like the one above, was commenced on 8 July 2002. Here, the Defendants are the TRC and its Deputy President. This concerned the minutes of the AGM held on 2 December 2001, circulated to all members of the TRC and which the Second Defendant as Deputy President published and/or caused to be published and/or facilitated the publication of. The minutes contained the following passages which the Plaintiff said were defamatory of him:

(Paragraph 8.5)

"Dy President explained as to why Mr Mathi was expelled. He said that Mr Mathi did not respect the chair and had caused disruptions during meetings. He had been given an opportunity to defend his actions and the Management Committee had voted to expel him in accordance with the constitution. He said that legal suits should not be used as means to threaten an organisation for trivial matters. TRC was not a single organisation. It was a representative body. The decision to expel him was not made by any one person but rather a collective decision by TRC and its 26 affiliate organisations."

(Paragraph 8.18)

"Dy President said that too much had been discussed on this issue and he does (not) want to waste money and time for Mr Mathi's matter."

20. Much the same sort of particulars was given by the Plaintiff as to why the words defamed him. He claimed aggravated damages for libel, an injunction and costs against both Defendants.

The Interlocutory Applications

21. Before the trial proper commenced, I dealt with an application by the Defendants for security for costs to be furnished by the Plaintiff. The application for security for costs was on the basis that the Plaintiff was impecunious. Nothing was stated in the Defendants' affidavit that would bring the application within one of the four grounds provided in Order 23 rule 1 (1) of the Rules of Court. For that reason, I dismissed the application with costs fixed at \$700 to be paid by the Defendants to the Plaintiff.

22. In the midst of the Plaintiff's testimony, I dealt with another interlocutory application. This application made by the Plaintiff during the trial was for an order that he be permitted to call S Chandra Das to testify orally at the trial. S Chandra Das was a senior advisor of the TRC. The Plaintiff wanted his objective evidence relating to the events in the TRC in 1999 and 2000 and whether he had given certain advice to the present President of the TRC regarding the role of Nirumalan Pillay ("Niru"), an advocate and solicitor, in the MC of the TRC. As S Chandra Das' objective evidence was sought, the Plaintiff thought it inappropriate to ask him for an affidavit of his evidence in chief. His solicitors had informed S Chandra Das of their intention to call him as a witness and he indicated that if called to give evidence, he would do so. His solicitors had also informed the Defendants' solicitors of such intention. The application could not have been taken out earlier as there were attempts made to reach a mediated settlement of the dispute and the intended witness was one of the persons approached to act as mediator.

23. The Defendants objected to the Plaintiff's application as he should have known what his case was months earlier. In any event, the Plaintiff and a few others had written to S Chandra Das about the involvement of Niru in the TRC and S Chandra Das' response was in the bundles of documents prepared for the trial.

24. I saw no good reason why there should not be an affidavit of evidence in chief by a non-partisan witness who had not indicated his reluctance to make such an affidavit. The rules pertaining to affidavits of evidence in chief were introduced to reduce trial time and to prevent "ambushes" or surprises by parties at trial. Oral testimony should therefore be permitted only where good reason is shown. There was also no good reason why the application to call the intended witness could not have been made much earlier. After all, the suggestion to invite the intended witness to be a mediator or one of the mediators came about only when the parties were already before the court. Accordingly, I dismissed this application and ordered the Plaintiff to pay costs of \$700 to the Defendants.

The Plaintiff's Case

25. The Plaintiff traced the history on how he came to be in the same team as the present President of the TRC, R Theyvendran. The 1998/1999 MC was led by one Kesavan who was said to have managed the TRC poorly. In November 1998, a motion of no confidence was proposed against the Kesavan MC. At the same time, a team comprising the Plaintiff, Theyvendran, Moganaruban, some of the present MC members and Niru was formed to try and prevent mismanagement of the TRC. Niru suggested that Kesavan be allowed to complete his term of office on condition that he agree not to stand for re-election at the next AGM. A compromise was achieved and the motion of no confidence became unnecessary. A committee known as the TRC 21 was formed under the chairmanship of Niru to chart the future course of the TRC.

26. However, Kesavan decided to stand for re-election and phantom members were created. This ploy was thwarted by an order of court obtained on 11 September 1999 by the Plaintiff, Theyvendran, Moganaruban and two others. At the 1999 AGM, the Kesavan team walked out and there was an impasse. Niru then proposed that an interim committee be set up to look after the interests of the TRC. The committee would comprise leaders from the various Indian organizations. This proposal was accepted and Theyvendran and Moganaruban became members of this interim committee. Niru declined appointment to the committee.

27. Disputes continued from the Kesavan faction leading the advisors of the TRC to establish a new and independent interim committee. The advisors urged Theyvendran, Niru and Kesavan not to stand for election at the 2000 AGM but to serve in other capacities so as to allow the hostility that had developed to dissipate.

28. However, only Niru heeded the advice not to stand for election. Theyvendran and Moganaruban insisted on standing for election. During the discussions leading to the two of them standing for election, Theyvendran undertook that after he was elected to office in the MC, he would focus on managing the TRC's Co-operative as he and Moganaruban had experience in that field. Niru would lead the TRC in the long run and this would be achieved by the MC co-opting him at a later date in accordance with the Constitution of the TRC. The team led by Theyvendran (which included the Plaintiff) agreed with his proposed plan of action. That team went on to win the elections at the AGM held on 23 July 2000 and to form the MC, with Theyvendran assuming the office of President of the TRC and Moganaruban taking on the position of Deputy President.

29. Immediately after the 2000 AGM, Theyvendran convened a MC meeting by gathering all the elected members. No prior notice was given. There was also no discussion on the proposed agenda. He began to make various decisions and to give directions. He directed the appointment of leaders of several sub-committees within the TRC when this ought to have been a collective decision after proper discussions among the senior MC members. He further directed the setting up of a committee to handle the celebrations for the approaching National Day which the Plaintiff did not think was proper as this should have come within the purview of the Cultural Committee. From that very first MC meeting on 23 July 2000, the Plaintiff felt that Theyvendran was not conducting himself properly as the President of the TRC as he had the tendency to make decisions which suited himself and without obtaining the views of others. However, in order not to cause any embarrassment, the Plaintiff decided not to voice his feelings at that meeting. Instead, he confided in another MC member, Amallathasan.

30. It soon dawned on the Plaintiff that Theyvendran was going to run the TRC as though it belonged to him. The President wanted only "yes-men" and constantly used his influence and financial backing to obtain their support. He was fully supported in this by his Deputy President. The Plaintiff, a taxi driver, alleged that Theyvendran had made the wrong assumption about him—that he, coming from a humble

background, would do as he was told in the MC. However, he was not prepared under any circumstances to compromise his principles by doing Theyvendran's bidding

31. The second MC meeting in August 2000 was conducted in much the same domineering manner. The third MC meeting held on 5 September 2000 was a special MC meeting conducted in the premises of Stamford Press Centre, a printing company controlled by Theyvendran. As usual, the President would raise issues not listed in the agenda. He talked about the problems he was having with the Board of Directors of the Co-operative and, when pressed by the Plaintiff to explain in detail the problems, declined to elaborate and simply said that the MC should leave him to deal with the problems. He appeared agitated and was displeased with the Plaintiff's tenacious questioning. Further, no minutes were disclosed for that meeting.

32. The Plaintiff felt that the President had reneged on his pre-election undertaking concerning Niru. Although he had no personal interest in getting Niru to join the MC, he felt it was necessary to address this issue as he believed that Niru could contribute significantly to the cause of the TRC. He therefore spoke to Amallathasan who managed to arrange an informal meeting with Theyvendran together with the Presidents of the affiliated organizations before the second MC meeting. The Plaintiff, who attended that informal meeting, said that Theyvendran claimed he did not do anything to facilitate Niru's entry into the MC because certain "top people" were not in favour of it. Theyvendran also told those present to give him six months to do something about it.

33. Subsequent MC meetings were conducted by the President in the same dictatorial style. He was also getting increasingly agitated by the Plaintiff's questions about the Co-operative. At the meeting of 14 September 2000, Theyvendran announced that he had decided to close down the Co-operative because the Board of Directors refused to do his bidding and he had no time to run it in any event. When the Plaintiff questioned him again, he challenged the Plaintiff to take over the Co-operative. The Plaintiff accepted the challenge.

34. At that meeting the Plaintiff raised again the issue concerning Niru. That agitated the President to the extent that he shouted at the Plaintiff and accused him of being a culprit and a troublemaker. He stated that the Plaintiff should not raise the same issue again as he had already decided to wait for six months before dealing with it. He repeated that "top people" did not like Niru. When asked by the Plaintiff to identify the "top people" so that he could speak to them about the issue, Theyvendran said he was referring to Chandra Das. The Plaintiff suggested that arrangements be made for the MC to meet the senior advisor but Theyvendran refused and said that if the Plaintiff wished, he could go and meet Chandra Das himself.

35. The President kept on raging during those exchanges. He even banged the table violently and demanded the Plaintiff's resignation. He then stormed out of that meeting.

36. The Plaintiff apologized to those remaining at the meeting for the heated outburst. Moganaruban asked him to apologize to Theyvendran as well but he insisted he owed the President no apology.

37. At the next MC meeting on 5 October 2000, Theyvendran did not turn up. Moganaruban chaired the meeting. The Niru issue was discussed once again and Moganaruban announced that Theyvendran had written to Chandra Das about it. He added that they would revisit the issue after Chandra Das responded. The Plaintiff asked for a copy of the letter written by Theyvendran but his request was turned down.

38. Sometime after that meeting the Plaintiff met with five other MC members to discuss the Niru issue. They decided to present a joint written representation to Chandra Das setting out the factual background in order to seek his guidance. They approached Niru for advice. Niru suggested that the matter be set out accurately, truthfully and fairly. On 6 November 2000, the six MC members signed the letter and sent it to Chandra Das.

39. At the next MC meeting held on 14 November 2000, Moganaruban announced that Chandra Das had replied to Theyvendran and claimed that the reply confirmed Theyvendran's position that "the top" did not want Niru in the TRC. The Plaintiff did not accept that statement and asked that the reply be read out. He also repeated his request that Theyvendran's letter be produced. Both his requests were not acceded to and a lot of heated arguments followed. Moganaruban then led some MC members to approve the following motion:

"The elected personnel of the current MC shall continue to manage the TRC till the election of a new MC in accordance with the constitution. No further discussion on the issue of bringing Mr Nirumalan into the

MC would be allowed. The TRC MC shall continue with its activities and projects for the benefit of the community and all members of MC were requested to work towards bringing TRC as an united and apex organization for Tamils."

The Plaintiff and Amallathanan objected to the motion.

40. It became absolutely clear to the Plaintiff that Theyvendran, this time through Moganaruban, harboured very deep-seated resentment against him for the queries that he had repeatedly raised. He saw the letter dated 14 November 2000 from Chandra Das subsequently and realized that nothing in it suggested Niru's intended role in the TRC was not favourably received by Chandra Das or any "top people". That letter, addressed to Theyvendran and copied to "Mr Amallathanan & Others" at Amallathanan's residential address, stated:

"Dear Theyvendran,

Six members of your Committee have asked me to state my views regarding Mr Niru Pillai and his role in TRC.

When you asked me about a role for him after the TRC elections (at the time of the TRC Multi-Purpose Co-operative dispute) I suggested the position of legal adviser, since he did not contest the election. You also wrote to me recently on Mr Niru Pillai and I replied to you accordingly.

I cannot tell you who should be in or not of the committee. For the record, I must state that it is for you and your Committee to decide who should be in the TRC Council.

Grateful, if you can bring this to the attention of your Council Members."

41. Theyvendran also made a big issue concerning the Plaintiff's signing of some blank receipts for donations collected during the National Day dinner. Although the Plaintiff had explained to the Chairperson of the National Day Dinner Committee that he had signed some blank receipts which were eventually not used, Theyvendran unjustly accused the Plaintiff of dishonesty without allowing him to explain to the MC. He directed that an investigation be carried out by the said Chairperson and a report issued and did not even allow the Chairperson to explain.

42. At the MC meeting of 30 January 2001, the Plaintiff raised the issue of the minutes of previous meetings not being recorded and passed and this riled Theyvendran who continued his attack on the Plaintiff regarding the blank receipts although the report confirmed that he had not acted improperly in the matter. This again showed Theyvendran's ill will against the Plaintiff. When the Plaintiff asked him for an apology for having insinuated that he had manipulated the accounts, Theyvendran refused. The President was so agitated at that meeting he could scarcely control himself. He screamed and shouted at Amallathanan and challenged him to take over the presidency which Moganaruban promptly seconded. Theyvendran then stormed out of the meeting followed by Moganaruban.

43. Pursuant to a notice issued on 7 February 2001, a MC meeting was held on 15 February 2001. Theyvendran did not attend this meeting and it was therefore chaired by the Deputy President, Moganaruban. From the start of the meeting it was clear that the Deputy President had no intention of keeping to the stated agenda. As usual, no minutes of the previous MC meeting were presented for discussion although this was a strict requirement for MC meetings. Moganaruban glossed over this by saying that they intended to discuss other matters. He launched into a speech on how the Plaintiff was unable to see eye to eye with the President and this was the prelude to the manipulative act to expel the Plaintiff from the MC. Moganaruban then demanded that the Plaintiff resign from the MC since the latter was not able to work with the President. The Plaintiff was surprised and outraged by this and he made it clear to all present that he had done no wrong and had no intention of resigning. Besides, the question of his resignation was not included in the agenda in the first place.

44. Upon his refusal, Moganaruban then purported to prefer charges of misconduct against the Plaintiff. As this was also not in the agenda, it again took the Plaintiff completely by surprise. No formal notice of any charges had been given and he was not told the relevant provision of the constitution under which he was being dealt with. To him, "it was an ambush, all planned and calculated to achieve maximum effect". He realized that Moganaruban and those allied to Theyvendran had planned to use that meeting to stage a scene leading to his

expulsion. He felt it was a shameful and dishonest attempt engineered by the President to expel him.

45. Despite the Plaintiff's objections, Moganaruban put the motion to a vote but could not secure a two-thirds majority anyway. The motion therefore failed.

46. The next day, 16 February 2001, the TRC issued a letter to the Plaintiff setting out the following

"Dear Sir,

MISCONDUCT AT MANAGEMENT COUNCIL MEETING

It is noted that at the Management Council Meeting held on 15 Feb 2001, the Chairperson, Mr Mohana Ruben preferred charges against you and proposed that you be expelled from the Council.

The charges preferred against you are as follows:

- 1 that you have not shown proper respect for the Chairman at MC meetings.
- 2 That you kept deliberately speaking on a subject despite repeated reminders by Council members to proceed with the matter on the agenda.
- 3 That you have refused to accept the decision of the President, which was based on the majority views of the members present
- 4 That you have stated that the President was lying
- 5 And your conduct has resulted in disruptive meetings and the abrupt ending of more than one MC meetings.

In accordance with TRC Constitution (18.1), you are hereby given notice to show cause by 22 Feb 2001 as to why you should not be expelled from the TRC Management Council for your behavior. It is the considered opinion of the Council members that your action was prejudicial and contrary to the interest of the Council.

(signed)

Pandiyani Vellasami

General Secretary

(On behalf of the TRC MC)

cc Mr R Theyvendran President, TRC

Mr Mohana Ruben Dy President, TRC".

47. The Plaintiff was overcome by profound sadness when he read the above letter as it showed that there was a vendetta against him and that compliance with the TRC constitution did not matter. It seemed to him that it did not matter to those seeking his removal that they had failed to do so on the same complaints at the 15 February 2001 MC meeting. The last sentence of the above letter also indicated that the MC had pre-judged the matter.

48. On 20 February 2001, the Plaintiff personally delivered his two-page response to the General Secretary of the TRC. In his letter, he set out what had happened at the 15 February 2001 MC meeting. He asked the Deputy President then what wrong he had done that warranted the demand for his resignation and the reply was that at some previous meeting the Plaintiff had banged the table. When the Plaintiff asked if there was anything else, he was told he should know for himself. The Plaintiff replied then that it was the President who had first banged the table at the meeting in question and then walked out of the meeting stating that the Plaintiff must resign or he (the President) would. However, the President went on to chair the next MC meeting and there was no longer any issue about the banging of the table or of anyone resigning. The allegation about table-banging was thus "never a live issue on 15.2.2001". In his letter, the Plaintiff reiterated that the matter had been put to a vote and the motion was defeated. He also stated that no decision was taken by the MC that any action on his part was prejudicial and contrary to the interest of the MC and ended by saying "As such, your notice dated 16.2.2001 to me to show cause is invalid and without any basis. I refute all the allegations made against me. I also reserve all my rights as an elected officer of the Management Council". There was no reply to the Plaintiff's letter.

49. However, in the meantime, a letter dated 19 February 2001 giving notice of a special MC meeting scheduled to be held on 1 March 2001 was sent out. It was stated in that letter that "this meeting is called to discuss the issues brought against the council member, Mr G Mathialagan by the Dy President, Mr Moganaruban at the meeting held on 15 Feb 2001." It also emphasized to all MC members that "your attendance is utmost important". The Plaintiff was shocked by this "unholy haste" to remove him as the MC had not even received his response yet.

50. The failure to disclose minutes of MC meetings continued to cause the Plaintiff concern and on 20 February 2001, he and seven other MC members wrote to the General Secretary to enquire why the minutes for 30 January 2001 were not distributed in spite of a specific request for such at the 15 February 2001 meeting. They requested that all minutes that had not been distributed, including those for 30 January 2001 and for 15 February 2001, be sent to all MC members immediately. The General Secretary replied to the eight of them on 23 February 2001 stating that the President, the Deputy President and he decided not to distribute the minutes for 30 January 2001 as the meeting on 15 February 2001 was intended to address only the first item on the agenda, that is, "To discuss the abrupt ending of the last MC meeting held on 30 January 2001 (to be chaired by Mr Moganaruban)". He reminded them that the Deputy President had explained all this at the commencement of the 15 February 2001 meeting and that his proposal to discuss only the said item was accepted by everyone present. He also stated that minutes of all previous meetings had been distributed and accepted at subsequent meetings and that copies could be obtained at the TRC office (in Peace Centre, Sophia Road).

51. On 1 March 2001, for the first time, all the representatives of the TRC affiliates attended the special MC meeting. The Plaintiff had no doubt that this was arranged by Moganaruban to secure the necessary votes. One Jalaludin, an unauthorized person, was even introduced as an observer by Moganaruban.

52. Just before the meeting began, the Plaintiff was handed a copy of the letter containing the charges preferred against him. Although it appeared to be a copy of the show cause letter of 16 February 2001, it was dated 1 March 2001. The Plaintiff pointed this out to the General Secretary who, after exchanging glances with the Deputy President seated next to him, muttered that it was a mistake and used a pen to change the date to 16 February 2001 and then returned the amended copy to the Plaintiff. The 1 March 2001 letter also had only four charges instead of five, omitting the charge "That you have stated that the President was lying" listed as the fourth charge in the 16 February 2001 show cause letter.

53. Standing Orders were issued for the 1 March 2001 MC meeting giving the President extensive power as to the conduct of MC meetings. Members were allowed only three minutes to speak on any subject. Moganaruban proposed the adoption of these Standing Orders but added that they did not apply to the President or the Deputy President.

54. The minutes for the 15 February 2001 MC meeting were again not produced at this meeting. The Plaintiff and some MC members raised this issue but Moganaruban refused to circulate the minutes. Instead, he instructed the General Secretary to read out the minutes.

55. The Deputy President then began to speak at great length for Theyvendran, saying he was a good President who was unable to conduct meetings because of the Plaintiff's rude and disruptive behaviour. He then referred to the show cause letter (of 1 March 2002), stating that it had been sent to the Plaintiff and asking the Plaintiff what he had to say in response to the charges.

56. The Plaintiff began by asking what wrong he had done and whether he had acted against the TRC constitution. He pointed out that he had banged the table only after the President had done so and that the meeting was an illegal one as minutes of previous meetings had not been produced, particularly when the charges against him related to what he had done during those previous meetings. He also contended that the three-minute rule in the Standing Orders was unfair as it was clearly insufficient for him to respond to all the charges and that it should also apply to the President in any event. He pointed out that his letter of 20 February 2001 in response to the show cause letter of 16 February 2001 was not produced at that meeting for the benefit of all members, particularly those who were not present at the previous meetings.

57. While he was making his defence, Moganaruban interrupted rudely and demanded that he stop, claiming that he had already spoken for more than three minutes. The Plaintiff protested as that was untrue. Moganaruban responded by threatening to dismiss him from the meeting. At that juncture, other members such as Amallathasan spoke and protested at the unfair manner in which the MC meeting was being conducted. However, Moganaruban said he was not interested in hearing them and the Chairman could do whatever he wanted and could speak for as long as he wished. He then demanded that those who were standing or speaking sit down or be expelled from the meeting repeating the Standing Orders. The Plaintiff and several other members then said that the way the meeting was being conducted was illegal and unjust and he left the meeting followed by several others.

58. The Plaintiff subsequently received a letter dated 7 March 2001 from the TRC informing him he had been expelled for misconduct under the said rule 18.1 of the constitution. He felt very aggrieved but was convinced that he could get no justice for so long as Theyvendran and his "lackeys" were running the MC. There was therefore no point in going back to the TRC to settle the dispute although his removal was wrongful and illegal. He sought advice from Niru and was told by the lawyer it was not for him (Niru) to interfere and that the Plaintiff should let matters rest as the continuing disputes would not project a good image of the TRC. The Plaintiff accepted the "good advice".

59. However, months later, when the Plaintiff received the notice of AGM to be held on 2 December 2001, he noticed that his office was described as "vacant" and that he had "ceased" to hold that office. It was to him a malicious misrepresentation. That led to his letter of 19 November 2001 to the General Secretary where he repeated essentially the events in February and March 2001 set out above. He protested that he had been "denied the very basic rights of natural justice in at least two respects" in that he was subjected to the same charges more than once and by the same accusers and that he was not accorded a fair opportunity to be heard. He pointed out for the first time that rule 18.1 of the constitution was for the purpose of expelling a person from membership of the TRC and not for expelling a MC member from office. He alleged that he had been a victim of a vendetta launched against him, in particular by the President and the Deputy President. He concluded his letter by demanding

"That you confirm to me in writing that I am still the Hon. Deputy General Secretary and that I remain a Management Council member.

That this confirmation is made by way of an official circular and sent to all members prior to the forthcoming AGM on 2.12.01.

Please respond to my requests in writing by 27.11.01."

60. The Plaintiff alleged that the failure of the President and the Deputy President to produce minutes at MC meetings assumed a more sinister significance when, after discovery of documents had taken place in these proceedings, he found that the minutes for the meetings held on 5 October 2000 and on 30 January 2001 had been amended and "the discrepancies are manifest". He was shocked to learn that the MC could have descended to fabrication of minutes of meetings. Even the letter purportedly setting out the charges against him was fabricated as the show cause letter of 16 February 2001 had different contents from the one originally dated 1 March 2001.

61. The Plaintiff then set out his case in defamation in respect of the Annual Report for 2000 along the same lines as his pleadings (summarized earlier in this judgment). Where his case in defamation in relation to the Peravai publication was concerned, he said that his solicitors made a search for the MITA number of Peravai in order to ascertain the details as to its publishers, editor, licensee and other particulars. The inquiries revealed that the TRC was not on record as being the publisher of any publication. His solicitors then wrote to MITA to confirm the position and were told that the publishing permit granted to the TRC expired on 23 October 2001. The Plaintiff then wrote to the Minister in charge of MITA to complain that no action was being taken against the unlicensed publication which could continue to defame him in subsequent issues. Sometime in May 2002, his solicitors received the papers relating to the TRC's application for a renewal

of the licence. MITA also replied to say that a warning was issued to the TRC. The Defendants' solicitors' subsequent response to the Plaintiff's solicitors on this issue was that it was an administrative oversight that the permit for the Peravai was not renewed and that there was nothing sinister in it. In his evidence, the Plaintiff maintained that the fact the January 2002 issue of Peravai was an illegal publication constituted malice by the Defendants against him. Further, instead of setting out the full version, including his contentions in respect of his removal, the Peravai stated categorically that he was removed as a member.

62. In reply to the Plaintiff's solicitors' letter of demand in June 2002 in respect of the alleged defamation in the January 2002 issue of the Peravai, the Defendants' solicitors stated that they did not agree that the article defamed the Plaintiff. They went on to say:

"The article is clear as to the fact that the former Deputy General Secretary had issued a writ for his wrongful expulsion as Deputy General Secretary. This is a fact. It is also a fact that Mr Mathi Alegen had been removed from his position as Deputy General Secretary and this was within the knowledge of the members. Your client's pleadings in Suit No. 1519/2001/Q confirm this as do the discussions at preceding Annual General Meeting

If your client has any reservation in this respect, our clients will clarify the matter at the upcoming AGM as well as the next issue of "Peravai".

63. The Plaintiff's solicitors responded by saying that the Defendants' attempt to justify the article would be relied on in a claim for aggravated damages and that the Plaintiff "for his part needs no clarification".

64. Where the Plaintiff's third action was concerned, he alleged that the minutes of the AGM held on 2 December 2001 were published by the TRC and that Moganaruban, the Second Defendant in this action, uttered the words in issue and to that extent, published the words or facilitated their publication. As a result of the statement made by Moganaruban and put in writing in the formal minutes of meeting, the Plaintiff said he suffered severe anguish and was the subject of constant ridicule in the Tamil community. He further alleged that the statement was calculated to disparage him and was actuated by malice as shown in the events after the AGM in July 2000 to the special MC meeting of 1 March 2001.

65. R Kumaran, a life member of the TRC testified that he was not an active member but attended AGMs regularly. At the request of the Plaintiff, he attended and tape recorded the proceedings at the AGM on 2 December 2001 held at the Ceylon Sports Club. The proceedings were conducted in both English and Tamil. On 15 December 2001, he went to the office of Niru & Co. to make a tape-to-tape recording of the original tape. On 17 January 2002, he transcribed the recording wherever English was used. The Plaintiff did the transcript of those portions where Tamil was used.

66. Kumaran added that the issue of the Plaintiff's removal from office was discussed at the AGM 2001. The MC announced that the Plaintiff had instituted legal proceedings. A member, Kalaiselvan, said that the reason people resorted to court action was because they were not satisfied.

67. Kumaran also attended the AGM for 2002 held on 9 June 2002. He also tape recorded the proceedings at the request of the Plaintiff. On 10 June 2002, he went to the office of Niru & Co. to make a tape-to-tape recording of the original tape and on 12 June 2002, he transcribed the relevant English portion of the proceedings.

68. Kumaran accepted that he had done the taping with a portable recorder without the knowledge and consent of the MC. There were portions of the proceedings omitted when he had to leave the meeting room to change to a new tape. There were also inaudible segments in the recording

69. Amallathasan, a retiree, is the President of the Association of Singapore Tamil Writers, an affiliated organization of the TRC. He was elected as one of the Vice Presidents of the TRC at the AGM 2000. He testified that he got to know the Plaintiff in 1995 and learnt that the Plaintiff, like himself, was a person with great passion for the Tamil language. He also stated that the Plaintiff was "a straightforward and forthright character with a big heart and passion for Tamil culture and language".

70. Amallathasan then related the history leading to the ouster of Kesavan and his team from the MC. Niru was the leader of the team of five members who approached Kesavan to strike the deal regarding the motion of no confidence in Kesavan's team. Niru also led the TRC 21 Committee which comprised various leaders of Tamil organizations. Amallathasan was appointed a member of this committee. The TRC 21 Committee prepared the report called The New Directions. During this time, Niru introduced Theyvendran and Moganaruban to the team.

71. When Kesavan reneged on the compromise, the leaders of the Tamil organizations together with Niru and Theyvendran worked hard on their plans to take over control of the MC. It was agreed after discussions that Theyvendran, Niru and some other leaders would contest the elections. During these discussions, Theyvendran expressed very clearly his interest in managing the TRC Co-operative and said that he wanted to focus his attention on the Co-operative together with Moganaruban. However, Niru suggested that Theyvendran lead the team as President by virtue of his seniority while he (Niru) could take on the office of General Secretary. Amallathasan did not find this suggestion acceptable as Theyvendran and Moganaruban were not well known and lacked the necessary influence to lead the TRC. Theyvendran gave them the assurance that he was not interested in leading the MC and gave them the undertaking that if he was elected President, he would concentrate solely on the Co-operative, leaving the leadership of the MC to Niru. As a result, everyone in the team agreed on the line-up for the elections.

72. Amallathasan, together with Theyvendran, Moganaruban, the Plaintiff and another, had to commence legal action against Kesavan's team concerning the issue of the list of eligible voters. They relied on Niru's and Niru's partner's (Liew Teck Huat) advice. At the AGM held in September 1999, they received a lot of support from the members of the TRC and Kesavan's team, facing imminent defeat, walked out of the AGM. Niru then proposed the setting up of an interim committee to complete the unfinished business. Amallathasan, Theyvendran and Moganaruban were among the 17 persons appointed to this interim committee which took advice from Niru on various matters because of his experience and ability to deal properly with all members concerned. Niru also liaised with Chandra Das on behalf of the interim committee. The post-elections arrangements concerning Theyvendran and Niru were re-affirmed.

73. Due to the deadlock created by Kesavan's team, the advisors led by Chandra Das decided to set up a fresh interim committee in January 2000 comprising neutral members.

74. They continued with their preparations for the AGM 2000 with the following modifications to their plan – Niru and Aandeappan, another veteran member, decided not to contest the elections. There was otherwise no change to the original plan. At the AGM 2000, they were voted into the MC.

75. Very soon after the July 2000 elections, Amallathasan realized that Theyvendran was high-handed, arrogant and dictatorial as shown by his convening of the MC meeting immediately after the AGM and his unilateral appointment of the National Day Committee. Amallathasan then decided to have a word with Theyvendran. He gave him a call to fix an appointment to talk things over but Theyvendran was rather curt, asking whether he wanted to discuss the Niru issue and how many members were attending the discussions. Amallathasan then got in touch with all the Vice Presidents and the representatives of the affiliates to arrange a meeting with Theyvendran with the object of discussing the proper running of TRC and the issue concerning Niru joining the MC. The Plaintiff was among the group.

76. Theyvendran's response on the Niru issue was that "top people" did not like Niru. He told them that they should leave the matter to him as he was confident of resolving the issue in 6 months. Amallathasan was not satisfied with this answer and asked who the "top people" were. Theyvendran was very unhappy with this and was not inclined to discuss the matter further. He left the meeting midway, leaving Moganaruban to continue with the meeting. Moganaruban reiterated that the issue should be resolved in six months' time and that if it was not, he was willing to resign to make way for Niru to be made Deputy President.

77. At the MC meetings that followed, Amallathasan and the Plaintiff had repeated and heated arguments with Theyvendran over the Co-operative and the Niru issues with the Plaintiff being very vocal. They felt that Niru could exercise influence and had the necessary contacts and should therefore be brought into the MC to provide leadership according to the understanding they all had before the elections. Theyvendran was very agitated over the questions and was particularly agitated by the Plaintiff who was very vocal on those two issues. There were also heated exchanges between Amallathasan and the President over the latter's alleged dictatorial style of leadership. At one meeting, Amallathasan mentioned that the President was always a difficult person to discuss things with and the latter responded by standing up, proposing that he take over the job and then leaving the meeting in a huff with Moganaruban.

78. The rest of his evidence related to the correspondence with Chandra Das, the issue about the minutes of meetings and the events leading to the fateful day of 1 March 2001. He alleged that the Plaintiff spoke for about two minutes only before he was told he had exceeded the time limit in the Standing Orders. When he asked for the minutes of the previous meeting, Moganaruban would only allow the minutes to be read out even though he was holding a copy thereof. When Amallathasan and several other MC members asked that the minutes be circulated, Moganaruban proposed that the question whether they should be circulated be put to a vote. Feeling this was "an ultimate disgrace", Amallathasan walked out of the meeting followed by the Plaintiff and a few others. In spite of the verbal clashes he had with the President, Amallathasan did not face disciplinary action by the MC.

79. Niru, an advocate and solicitor since 1978, testified that he was actively involved in Indian organizations for more than two decades. He was and remains very passionate about promoting Tamil interests in Singapore, particularly in language, culture and education. He is a life member of the TRC and was consulted regularly by the leaders of the affiliated organizations. He also worked very closely with Chandra Das in his parliamentary constituency for more than ten years while the latter was a Member of Parliament. He became acquainted with the Plaintiff while organizing the 1995 Tamil Language Week. From the first time Niru met him, he found the Plaintiff "a forthright, down to earth and honest to goodness character" although the Plaintiff came from a humble background.

80. Niru also testified about the tumultuous recent history of the TRC, stating that the present General Secretary, Pandiyan, had been secretary to Kesavan as well and that by 1998, there were several complaints against Pandiyan who "had worked in concert with Kesavan". The interim committee in 1999 relied on Niru to seek guidance and advice from Chandra Das, a senior advisor of the TRC. Theyvendran was also particularly keen to participate in the discussions with the senior advisor. He even relied on Niru to vet all his letters to Chandra Das. Niru met Chandra Das on many occasions to try to resolve the problems in the TRC. On 31 January 2000, Chandra Das wrote to Niru and Theyvendran to state that the advisors had decided to set up a fresh interim committee for the TRC comprising respectable persons who had not been involved in the ongoing dispute and that it would take over the management of the TRC with effect from 1 February 2000.

81. Chandra Das suggested that Kesavan, Theyvendran and Niru should not stand for election in order to avoid a factional dispute. Niru agreed and accepted his advice. Niru assisted the new interim committee to find a solution to the problems but did not participate actively in the TRC while Theyvendran continued to take an aggressive position against Kesavan.

82. The interim committee reported later that fresh elections should be held. It reconvened the AGM. During this time, Niru was in London for a long period of time. Theyvendran contacted him and asked if they were going to stick to their plan to re-contest the elections. Niru replied that he would abide by the advice of Chandra Das and advised Theyvendran to do the same. However, Theyvendran said he had been given the go-ahead.

83. When Niru returned to Singapore on 8 July 2000, he found out from Chandra Das that neither Theyvendran nor Kesavan had been advised by him that they could re-contest the elections. In his letter to Chandra Das dated 21 July 2000, Niru mentioned that "It appears that I am the only one (of the three persons) who is abiding by your advice that we should not stand for office at the forthcoming TRC elections".

84. At the 23 July 2000 AGM, Theyvendran was elected President. Moganaruban, a relatively unknown candidate, was nominated and supported for the post of Deputy President because of Theyvendran's request. Consistent with the agreement reached earlier, Niru thought Theyvendran would ask him to serve in the MC and play a leadership role as previously envisaged. He was keen that the goals and aspirations spelt out in the "New Directions" report of the TRC 21 Committee be implemented. That report was in fact the manifesto of Theyvendran's team at the 1999 elections. Until he was co-opted, Niru did not see it appropriate to exercise any further influence in the MC. He felt that the MC should be given time to settle down.

85. It soon dawned on Niru from feedback received from some of the members of the MC that Theyvendran was in fact intent upon preventing him from joining the MC or being given any leadership role. Further, instead of concentrating on the Co-operative, he began to run the MC in an autocratic way and was supported staunchly in this by Moganaruban. When consulted by some of the leaders, Niru advised them to deal with matters amicably so as not to disrupt the TRC. Those MC members were however unable to get Theyvendran committed to what he had promised. There were repeated disputes and this caused Niru a lot of concern, especially when one of the issues was about him joining the MC. When some of the MC members sought his advice about approaching Chandra Das to resolve the issue about him joining the MC, he felt that it would be inappropriate for him to do so as he was not part of the MC. He suggested instead that they ascertain from Chandra Das his position since "Theyvendran had used his name in vain". He felt that the MC members should be guided by Chandra Das'

advice.

86. Niru concluded by saying that Theyvendran had not observed the spirit of the "New Directions", had reneged on his pre-election agreement made in 1999 and had begun to run the TRC with a heavy hand. He felt exceedingly disappointed by the turn of events as both he and Theyvendran could have worked together and made substantial contribution to the TRC.

87. Niru acknowledged that he helped the Plaintiff fund the costs of the present proceedings by giving him a loan of \$50,000 for the court fees. He said he had helped others in the same way before. Where the conduct of the case was concerned, he left everything in the hands of his partner in the law firm, Mr Liew Teck Huat.

88. Naa Aandeappan, a life member of the TRC and the Deputy Head of Tamil News in Mediacorp News Pte Ltd, said he had been involved in Tamil community work for several years. He too gave the recent history of the TRC, how the present team got together and the pre-election understanding concerning the roles of Theyvendran and Niru in the MC should the team be elected to office. He also testified about the tumultuous events in 1999 when the interim committee had to be formed after the Kesavan faction walked out of the AGM. He, together with Amallathasan, Theyvendran and Moganaruban, was appointed to be a member in the 17-member interim committee. Niru declined to be a member of the interim committee as he was not holding any office in the Indian organizations at that time. However, they consulted Niru regularly on various matters. On behalf of the interim committee, Niru held discussions with Chandra Das to find a way forward for the TRC.

89. The interim committee held meetings to deal with the various issues and Niru was invited as a guest at some of these meetings to give his views and guidance. At these meetings, the previous arrangement that Theyvendran was only interested in managing the Co-operative was affirmed.

90. After the new interim committee was set up by the advisors of the TRC, the team continued to prepare for the 2000 AGM but Niru and Aandeappan decided not to contest the elections. Other than that, there was no change in the original plan.

91. After Theyvendran was elected President, he reneged on the agreement and completely sidestepped the issue of Niru joining the MC. He also refused to endorse the plans painstakingly conceived and put in place in the report "New Directions" which was printed by Theyvendran's printing company and distributed to the members of the TRC by the Plaintiff and others. Even when they were in the interim committee, Theyvendran, the Chairman of the interim committee, would ask Aandeappan, who prepared the minutes of the meetings, to send the minutes to him first before they were sent to Jayakodi, who chaired the meetings, claiming that he wanted to ensure accuracy in the minutes. As an illustration, Aandeappan referred to the meeting held on 31 October 1999. There, the discussions were somewhat controversial because they involved rather sharp personal exchanges between two members. Aandeappan omitted those exchanges in the minutes as they had no relevance to the TRC. However, Theyvendran made substantial amendments to the minutes and wanted the exchanges recorded. After making the amendments, he would ask Aandeappan to send the minutes to Moganaruban as well and the latter would then revert with his comments. Aandeappan was left in a dilemma. He knew it was improper for any committee member to dictate to him on how to prepare the minutes. However, because of Theyvendran's insistence, he did not refuse him.

92. When Niru declined to stand for elections at the 2000 AGM, Aandeappan was invited to stand for the office of General Secretary. However, he declined as he could not accept the way Theyvendran and Moganaruban treated him while they were members of the interim committee, in particular, their insistence on vetting the minutes and dictating the contents. Further, he saw from the autocratic way in which they conducted meetings of the interim committee what was looming ahead and he wanted no part of it.

The Defendants' Case

93. Theyvendran, a businessman, explained that as the months leading to the 23 July 2000 elections had been very turbulent ones, he was anxious that the TRC move forward. There was much to be done and he held the first MC meeting the same day after the elections.

94. However, during the subsequent MC meetings, the Plaintiff "behaved in an extremely rude, boisterous, disrespectful and disruptive manner". He would be "arrogant and disrespectful" to the chairperson and would insist on his views being adopted. Meetings which could have concluded within an hour would go past ten o'clock while the Plaintiff made "long meandering speeches". He would repeatedly raised the

issue of bringing Niru into the MC as a key office bearer, particularly as Deputy President in place of Moganaruban, the duly elected holder of that office. The Plaintiff ignored the decisions of the MC that this issue should not be discussed further. He cast aspersions and challenged the credibility of the chairperson, hampering the progress of MC meetings, some of which ended abruptly, and affecting the morale of many MC members.

95. At the MC meeting on 14 September 2000, which was a special meeting held essentially to discuss the National Day Dinner that had been organized, the Plaintiff and several others insisted that Niru be brought into the MC inspite of the President and others telling them that was not possible and the President telling the Plaintiff that, given the past problems of the TRC, Chandra Das had advised that Niru be considered for the position of legal advisor. In order to permit the meeting to carry on, it was agreed that the issue of the appointment of Niru be deferred for six months. The Plaintiff eventually agreed to a deferment of four months. The meeting then considered other matters. Towards the end of the meeting the Plaintiff again raised the same issue and insisted that a decision be made. He did not accept what the President had said was the advice of the TRC's advisor and basically held the President out to be a dishonest person. In a rude and loud manner, he insisted that Chandra Das be contacted to find out his views. Almost the entire MC was against this course of action. The Plaintiff was shouting most of the time. He banged the table aggressively and pointed his finger at the President in a menacing manner. As a result of his behaviour, the President told him he should resign. The President then left the meeting and the Deputy President took over the chair.

96. A notice of the next MC meeting scheduled for 28 September 2000 was sent out on 22 September 2000. However, most of the MC members were fed up and did not wish to attend the meeting and it became obvious that the requisite quorum would not be achieved. That meeting was cancelled. The members were persuaded to turn up for the next meeting to be held on 5 October 2000. The President was overseas on that date but felt that the meeting should go on.

97. On 3 October 2000, the President wrote to Chandra Das to inform him that some MC members wanted Niru to be involved in the MC inspite of his advice that Niru be appointed legal advisor. He recalled meeting Chandra Das at Chennai before the 2000 AGM and the advisor informing him that the new thinking was that anyone was free to contest the elections. He also recalled how he and others then tried in vain to contact Niru on the people who should be the officials and that neither he nor Niru wanted to become the President of the TRC. Eventually, as Niru could not be reached and no one else was interested in assuming the presidency, everyone unanimously decided that Theyvendran should stand for election to that office. Theyvendran went to say in his letter that there was never any intention to let down Niru and that he could still have the presidency. He recalled that after Niru's name was raised at one MC meeting, Chandra Das advised that Niru should be the legal advisor. Theyvendran also stated that he offered his resignation as President "to graciously hand over so that the interest of the Indian community is preserved" and that he had requested the MC to decide whether Niru or any other person could take over from him immediately or at the next AGM. He then asked Chandra Das to confirm his earlier advice that Niru was best suited to be legal advisor so that the matter could be resolved.

98. At the 5 October 2000 meeting the Niru issue was discussed again. After discussions, the following resolution, accepted by everyone present including the Plaintiff, was passed:

"The officially elected Management Committee shall continue to remain in power for the entire term of office. Any change in the MC shall take place in accordance with the Constitution of the TRC".

99. On 9 October 2000, Chandra Das replied to Theyvendran, saying:

"You have been elected at the AGM as President and as such you have a responsibility to carry out your duties until the next AGM. However, if you wish to resign for whatever reason, it is your decision.

As for Niru he is not an elected member of the committee. My earlier advice of using him as legal adviser still stands."

100. On 14 November 2000, Theyvendran received another letter from Chandra Das, the text of which has already been set out at paragraph 40 above. Theyvendran was not aware that six MC members had written to the advisor of the TRC. At the MC meeting held that

same day, the letters from Chandra Das were distributed to the members. As Theyvendran's integrity had been made an issue in this matter, he left the meeting when this matter was to be discussed. He was told that the Plaintiff held the view nevertheless that the letter established that the MC had the power to bring Niru into the MC and was again extremely disruptive. Eventually the resolution spelt out at paragraph 39 above was passed by the MC with only the Plaintiff and Amallathasan registering their objections.

101. At the MC meeting held on 30 January 2001, the Plaintiff again raised the Niru issue and wanted the resolution of 14 November 2000 removed from the minutes. Towards the end of the meeting he challenged the President and asked him to apologize to him over the incident concerning the signing of blank receipts. The meeting descended into chaos and came to an abrupt end with the majority of the members walking out.

102. Theyvendran did not attend the 15 February 2001 meeting which was chaired by Moganaruban. As the chairperson had proceeded wrongly in applying rule 18.1 of the constitution, it was decided that the issue of the Plaintiff's removal from office be dealt with by a full MC meeting convened specially to consider that matter and that the Plaintiff be asked to show cause in writing. Theyvendran then referred to rule 13.3 of the constitution which reads:

"The MC shall be empowered after due inquiry to remove from office or to expel a member who in its opinion has been guilty of injuring or attempting to injure, the Council or of acting contrary to its interest".

103. At the special meeting held on 1 March 2001 chaired by Moganaruban, it was unanimously resolved that the Standing Orders attached to the Notice of Meeting dated 19 February 2001 be adopted. The General Secretary clarified that all present were either elected MC members or representatives of the affiliate organizations, except for Jalaludin who was an observer. It was also agreed by a majority of 34 against six that as the minutes of the 15 February 2001 meeting were not ready, the minutes would be read out only. The Plaintiff's letter of 20 February 2001 was read out and interpreted in Tamil. The Plaintiff was allowed to address the meeting but spoke well beyond the time limit specified in the Standing Orders. Upon completing his speech, he walked out of the meeting together with four others, including Amallathasan and Aandeappan. A secret ballot was then conducted by the two appointed scrutineers and the result was 32 in favour of the motion to remove the Plaintiff from office and 2 opposing the motion.

104. It was originally the Defendants' case that the following letter dated 5 March 2001 was then sent by the General Secretary to the Plaintiff:

"EXPULSION FROM TRC MANAGEMENT COUNCIL

The TRC Management Council at its special meeting on 1.3.2001 conveyed for the purposes of your misconduct has by a two-third majority voted to expel you from the Management Council.

In accordance with TRC Constitution (18.1), you are hereby given notice that with effect from 1.3.2001 you are hereby expelled from the TRC Management Council. However you have the right to appeal to the next Annual General Meeting

We thank you for your past contributions and support.

(signed)

Pandiyar Vellasami

General Secretary

(on behalf of the TRC MC)

cc Mr K Shanmugam Advisor, TRC

Mr R Sinnakaruppan Advisor, TRC

Mr R Ravindran Advisor, TRC

Mr S Chandra Das Advisor, TRC

Mr R Theyvendran President, TRC

Mr Moganaruben Deputy President".

105. However, the Defendants conceded during the cross-examination of the Plaintiff that he was correct in stating that what he received was a letter dated 7 March 2001 in the following terms:

"EXPULSION FROM TRC MANAGEMENT COUNCIL

The TRC Management Council at its special meeting held on 1st March 2001 conveyed for the purposes of your misconduct and after hearing your explanation and your subsequent walkout, decided by a two-third majority to expel you from the Management Council.

In accordance with TRC Constitution (18.1), you are hereby given notice that with effect from 1st March 2001 you are hereby expelled from the TRC Management Council.

(signed)

Pandiyani Vellasami

General Secretary".

106. After his expulsion in March 2001, the Plaintiff made no objection or complaint about the MC's decision until his letter of 19 November 2001 to which the TRC responded, through the General Secretary, by its letter dated 27 November 2001 setting out the following

"1. The report sent out to all members is for the year ended 31.12.2000. As such the report reflects the activities for the year 2000. As the matter you are referring to occurred in March 2001 it will be reflected in the next annual report.

2. At the Management Council meeting held on 15.2.2001 the Chairperson brought charges against you and a vote was taken. It has to be noted that majority of the members present voted in support of the motion. As this was a monthly meeting a decision was taken to hold a special meeting and that you should also be given an opportunity to refute the charges against you. This decision was agreed upon by all members present at the meeting.

3. At the special meeting called on 1.3.2001 your reply was read out and even interpreted in Tamil for the benefit of all members and representatives present. You were given ample time to air your views and refute the charges brought by the Management Council against you.

4. At the end of the proceedings a secret vote was taken and the motion to expell

you from the post of Deputy General Secretary was passed. It has to be noted that 5 members including you had walked out of the meeting without the expressed permission of the Chairperson. This again showed your disrespect for the Management Council and the Chairperson.

5. The decision of the Management Council was conveyed to you by registered post on 7.3.2001. It is also to be noted that after receiving notice of you being expelled you had not challenged that decision. The decision by the Management Council to expell you on 1.3.2001 stands.

Thank You."

107. On 30 November 2001, two days before the AGM scheduled to be held on 2 December 2001, the Plaintiff's solicitors sent a letter of demand in respect of the alleged libel and set the deadline for a response at 12 noon, 1 December 2001. The Defendants were naturally unable to respond within that time frame and on 1 December 2001, the TRC was served a writ of summons for alleged wrongful expulsion from office. No claim for libel was made and the General Secretary was not made a Defendant at that time although he had also received a letter of demand. It was only on 15 May 2002, almost six months later, that the writ of summons was amended to include him as a Defendant and to add a claim for libel. The Plaintiff knew that the General Secretary sent correspondence in his capacity as such and with the approval of the MC. Although the preparation and the issuance of the Annual Report was the act of the MC and was approved unanimously by the MC, the Plaintiff sued only the General Secretary. He alleged that the Plaintiff was not sincere and that his legal action was not to seek redress but to embarrass the Defendants.

108. Theyvendran went on to assert that the MC acted in good faith and with propriety. He alleged that the Plaintiff's action was motivated by spite and that the timing of the writ of summons was calculated to threaten and intimidate the TRC. He said that rules 18 and 23 of the constitution allowed the Plaintiff to seek redress by convening a General Meeting but he had chosen instead to commence legal proceedings. At the last AGM and elections held on 9 June 2002, the Plaintiff did not stand for elections and neither was he nominated by anyone as a candidate. Despite the personal attacks directed against Theyvendran, the President carried only one vote in the MC meeting of 1 March 2001 which removed the Plaintiff from office by an overwhelming majority. He denied that he and the MC had been autocratic. He also claimed that he never undertook that on being elected, he would ensure that Niru be given a leadership role. Niru could have stood for elections for the office of President or any other position that he sought and there was no need for Theyvendran to give any such undertakings.

109. The Deputy President informed him that the reliance on rule 18.1 of the constitution at the 15 February 2001 meeting was misplaced and that the MC never proceeded to remove the Plaintiff from office. Instead, the MC then instituted a fair procedure to deal with the removal. Rule 13.3 conferred express powers on the MC to remove one of its members.

110. He claimed that he thumped the table at the meeting to emphasize a point and was not banging the table in anger. He had his own successful business and did not need to take up the presidency for personal glory.

111. Where the Peravai was concerned, that was the official newsletter of the TRC and was distributed to its members. The last publication permit was for the period 24 October 2000 to 23 October 2001. There was great enthusiasm to publish the 2002 issue and due to an administrative oversight, the permit was not renewed. The outgoing editor resigned sometime in October 2001 and no one attended to the renewal of the permit. Since the expiry of the permit on 23 October 2001, only one issue was published and that was the January 2002 issue complained of. Various MC members, including Theyvendran, helped in the preparation of that issue. It was printed by Stamford Press (Pte) Ltd. A new permit for the period 20 June 2002 to 19 June 2003 has been taken out and the General Secretary is the editor with effect from 20 June 2002.

112. At the AGM on 2 December 2001, the matter of the Plaintiff's removal from office was discussed and the minutes of that meeting showed that the members were informed and knew that he had been removed from his position as Deputy General Secretary and not as a member of the TRC and that the legal action was in respect of his expulsion from that office. The January 2002 article was also clear as to its meaning that the Plaintiff was removed from that office. The 1 March 2001 MC meeting was attended by 40 MC members, many of whom

represented the affiliated organizations and they all knew the facts. The rest of the article complained of was true and correct. The Defendants' solicitors, in their letter of 7 June 2002, offered in any event to clarify this matter at the 2002 AGM but the Plaintiff's solicitors remarked that the Plaintiff needed no clarification. At the AGM on 9 June 2002, Theyvendran made the clarification anyway.

113. Pandiyan Vellasami, the General Secretary and an administrator working in the Subordinate Courts, testified that he was present at all the MC meetings in question and confirmed that the Plaintiff's conduct was disrespectful and disruptive. He said the charges in the show cause letter of 16 February 2001 were justified. At the MC meeting of 14 September 2000 the Plaintiff acknowledged to the MC that his conduct was unbecoming by apologizing. At the subsequent meeting of 5 October 2000, he again acknowledged that he should not have spoken in the manner he did on 14 September 2000 but he became disruptive again nonetheless that day, warning the MC that an "earthquake is on the way". At the 14 November 2000 meeting, notwithstanding the earlier resolution on the Niru issue and the views of many MC members that Chandra Das' reply was clear on the issue, the Plaintiff again argued that the said letter established that the MC had the power to bring Niru into the MC.

114. Pandiyan prepared or vetted the minutes of MC meetings. He confirmed that the minutes were a correct reflection of the events that transpired although they did not record every detail. Drafts were prepared and then amended before they were finalized and approved. He could not explain how the Plaintiff came to have a different version of the minutes for the 5 October 2000 meeting. The TRC office in Peace Centre was open to members and the Plaintiff was an office holder at the material time anyway. Pandiyan conceded that the correct version of the 30 January 2001 minutes was the one set out in the Plaintiff's affidavit of evidence in chief. A copy of an earlier draft had been given by mistake during discovery. As for the letter containing the charges, he first drafted a letter containing only four charges. The draft was amended by the President to include what appeared as the fourth charge in the 16 February 2001 show cause letter to the Plaintiff. On the day of the special MC meeting, thinking that some members might forget to bring the show cause letter, he decided to print copies of the 16 February 2001 letter from the computer file but unfortunately retrieved the original draft containing only four charges. The auto-date feature in his computer automatically dated the letter as 1 March 2001. In respect of the letter informing the Plaintiff about his expulsion from the MC, again there were different drafts done. When discovery of documents took place, the TRC provided an earlier draft to its solicitors.

115. Moganaruban, a businessman and the Deputy President of the TRC, testified that he was present at the relevant MC meetings and confirmed that the Plaintiff was indeed disrespectful and disruptive at those meetings. He also felt that the charges preferred against the Plaintiff in the show cause letter of 16 February 2001 were justified.

116. On 14 September 2000, after Theyvendran left the meeting, Moganaruban chaired the rest of the session. The Plaintiff apologized for his behaviour that evening. The meeting ended with everyone (including the Plaintiff) agreeing that the MC's earlier decision on the Niru issue should stand.

117. The 5 October 2000 meeting was chaired by Moganaruban. He confirmed that the resolution stated in paragraph 98 above was passed by the MC. The Plaintiff's behaviour at that meeting was again objectionable. In spite of the earlier decision made by the MC, he again made long speeches to try to persuade the members to appoint Niru to the MC, addressing the members for as long as half an hour at times. The majority of the MC wanted an end to this and hence the said resolution was passed by all present, including the Plaintiff. Moganaruban concluded the session with the words, "no further discussion will be entertained from now on this issue and the proposed appointment of Mr Nirumalan Pillay as Legal Adviser shall be discussed sometime in February 2001". The Plaintiff nevertheless ended by making the threat, "it looks like an earthquake is on the way".

118. For the 14 November 2000 meeting, Moganaruban was the chairperson of the second half of the meeting. The letter from Chandra Das was distributed to everyone present and almost everybody took the view that the letter clearly showed his advice was that Niru be the legal advisor. The Plaintiff, however, was of the opinion that the letter gave the MC the power to appoint Niru as an office bearer in the MC. He was insistent and repetitious in his views and would interrupt others and refuse to sit down. That led to the passing of the resolution that no further discussion on the Niru issue would be permitted (see paragraph 39 above), with only the Plaintiff and Amallathasan opposing.

119. After the 30 January 2001 MC meeting, many MC members told Moganaruban that they did not wish to attend any more meetings because of the way the Plaintiff was behaving. Someone suggested that Standing Orders be introduced for better control of the proceedings at meetings. When the agenda for the 15 February 2001 meeting was sent out, that meeting was supposed to be one of the regular monthly sessions. However, Moganaruban decided that the 15 February 2001 meeting should be used to resolve the problems plaguing the MC. He

therefore decided that the MC should discuss only item 1 listed in the agenda and not be distracted by other matters.

120. It was agreed that Moganaruban would chair the meeting that the minutes of the previous meeting would not be distributed as only item 1 was to be discussed and that Standing Orders be adopted. He sought the views of the members on how to find a solution for the discord at MC meetings. Most of the members were of the view that the Plaintiff was the problem. After lengthy discussions, Moganaruban asked the Plaintiff to resign for the good of the TRC. The Plaintiff refused to do so. He was extremely arrogant and spoke at length about how he had done no wrong. He asked the Deputy President what wrong he had done and was told it was set out in the minutes of the previous meetings.

121. Feeling that the meeting was carrying on without any purpose and to bring finality to the issue, Moganaruban decided to proceed under rule 18.1 of the Constitution. A majority of the members voted in favour of charging the Plaintiff with:

"(Plaintiff) had not had cordial relations with the President.

Had misbehaved at MC meetings (banged table, raised his voice, repeatedly brought the meeting to disrepute).

Had shown disrespect to the Chair".

122. A majority also voted in favour of removing the Plaintiff from office. At this juncture, the General Secretary informed Moganaruban that rule 18.1 of the Constitution provided that the Plaintiff be given an opportunity to respond in writing and that at least two-thirds of the MC must vote in favour of removal. Moganaruban realized it would be wrong to proceed any further. As he had proceeded wrongly under rule 18.1, it was decided that the issue concerning the Plaintiff's removal from office should be dealt with by a full MC meeting convened specially for that purpose and that the Plaintiff show cause in writing. The Plaintiff did not object to this course of action.

123. On 1 March 2001, Moganaruban was again the Chairperson. The Standing Orders were adopted and the Plaintiff's letter dated 20 February 2001 was read out and interpreted in Tamil. The Plaintiff addressed the MC but spoke well beyond the time limit stipulated in the Standing Orders. He also interrupted other speakers repeatedly. After completing his submissions, he walked out of the meeting with four other MC members. The secret ballot was then conducted by the two scrutineers. The result of the ballot showed 32 in favour of the motion to remove the Plaintiff from office and 2 against.

124. Where the Plaintiff's claims in defamation were concerned, Moganaruban said the minutes of the AGM held on 2 December 2001 were prepared and sent to the members of the TRC for the purpose of the AGM 2002 to be held on 9 June 2002. A 67-page booklet entitled "2002 Tamil Representative Council Annual Report, Accounts, Annual General Meeting, Sunday 9 June 2002" was sent to all TRC members. Ten pages of this booklet set out the minutes of the AGM 2001 which were not circulated separately to the members. The minutes of the AGM 2001 were recorded by a Deputy General Secretary, vetted by the General Secretary and then approved by the President. The preparation of the Annual Report was approved by the MC. Moganaruban did not draft the minutes nor arrange the printing of the Annual Report. He participated and spoke at the AGM 2001 as the Deputy President and a member of the MC when the issue of the Plaintiff's removal from office came up for discussion and after other members of the MC had already spoken on it. By then, the members of the TRC were aware that the Plaintiff had commenced legal action against the TRC in respect of his removal from the office of Deputy General Secretary. They were also aware that the Plaintiff could have appealed to the AGM against his removal but did not do so and that the TRC received a letter of demand on 30 November 2001 and was served with the writ of summons the next day.

125. Moganaruban claimed that the remarks in issue were made by him as an officer of the MC and he was informing the members and responding to the members' questions. He could not recall his exact words but accepted that the substance of the ordinary meaning of the words recorded in the minutes was correct. He did tell the members that the objective of the Plaintiff's legal action was to threaten the TRC. He remained silent for about nine months about his removal from office and timed the commencement of his legal action to fall on the eve of the AGM.

126. Moganaruban reiterated that the TRC was a representative body and that the decision leading to the Plaintiff's removal from office was a collective one made by the TRC MC and the 26 affiliated organizations. Where his remarks at paragraph 8.18 of the minutes for the

AGM 2001 were concerned, he made them in response to the preceding speaker who asked that an EOGM be convened to resolve the issue. He did not think the TRC should incur cost and spend time on an EOGM about a matter that had been decided by the MC. After all, the Plaintiff could have called for an EOGM but chose not to do so. Moganaruban asserted that what he said at the AGM 2001 was true and correct and was borne out by the facts. The Plaintiff's solicitors' letter of 12 June 2002 asking him to state if he was responsible for the preparation, writing and/or publication of the words in issue set a two-day deadline for his response. It was sent not to his residential address but to the TRC's registered address. By the time the letter was sent to him, he was overseas. When he managed to speak with his solicitors about the matter, the Plaintiff had already instituted the legal proceedings. His failure to respond could not therefore be construed as an admission of responsibility on his part.

THE DECISION OF THE COURT

127. The function of the court in relation to the proceedings of clubs and societies like the TRC is a supervisory one and is confined to the examination of the decision making process, that is whether the rules of natural justice have been observed and whether the decision has been honestly reached. Its function is not to review the evidence and the correctness of the decision itself (*Singapore Amateur Athletic Association v Haron bin Mundir* [1994] 1 SLR 47).

128. As the Defendants have acknowledged that the Plaintiff's removal from office should not have come under rule 18.1 of the TRC Constitution (which deals with expulsion from the TRC and not the MC), there was no question of the Plaintiff not having exercised his right of appeal to the next AGM pursuant to that rule. It was agreed that the applicable rule should have been rule 13.3 which provides:

"The Management Council shall be empowered after due inquiry to remove from office any officer or to expel a member who in its opinion has been guilty of injuring or attempting to injure the Council or of acting contrary to its interests".

Rule 13.3 would in fact have given the MC a much simpler and swifter expulsion procedure. The subject would not have a right to exculpate himself in writing. Further, the MC would not need a two-thirds majority vote in order to expel the subject. A majority verdict would suffice. The words "prejudicial or contrary to the interest of the Council" (that is, the TRC) in rule 18.1 and the words "injuring or attempting to injure the Council or of acting contrary to its interests" in rule 13.3 are really not different in meaning in substance. The Plaintiff therefore had the benefit of a procedure which was more onerous for the MC and more advantageous for him. The only claim he could make was one of error as to form, not substance. It resulted in absolutely no prejudice to him and it appeared that he was not misled in any way, for example by appealing to the wrong body in respect of his expulsion. It was also clear that the MC had the power to expel him from office and that it was removing him from office and was not purporting to expel him as a member of the TRC altogether.

129. The Plaintiff was not subject to a double jeopardy in that he was tried twice on the same allegations. The Deputy President was advised, wrongly as it turned out, at the 15 February 2001 proceedings that the MC ought to have given the Plaintiff a chance to exculpate himself in writing. Proper charges were formulated. He was given a chance to show cause in writing. A full MC was convened on 1 March 2001 and he was given a chance to show cause orally. The concluding words in the 16 February 2001 show cause letter to him merely repeated the opening words of rule 18.1 and were not evidence of pre-judgment. The charges still had to be established and considered sufficient by the MC to attract expulsion. The 15 February 2001 proceedings were considered then to be wrong and the MC therefore effectively took the view that they were null and void and commenced fresh proceedings according to the understanding prevailing at that time. If the 15 February 2001 proceedings were valid, as the Plaintiff appeared to be contending, then he was properly expelled at the earlier meeting anyway.

130. There is a further provision in the TRC Constitution that is of relevance here. Rule 23.1 provides:

"DISPUTES

In the event of any dispute arising amongst members, they shall attempt to resolve the matter at an Extraordinary General Meeting in accordance with the rules in the Constitution. Should the members fail to resolve the matter, they may bring the matter to a court of law for settlement".

Undoubtedly, the Plaintiff had a "dispute" with at least some members. The Plaintiff was entitled to call for an EOGM within the terms of rule 10 of the TRC Constitution. He made no attempt at all to do so. The internal remedy provided by rule 23.1 does not oust the jurisdiction of the courts. It is in fact a salutary rule as it discourages resort to litigation as the first option. In *Chiam See Tong v Singapore Democratic Party* [1994] 1 SLR 278, it was held that the plaintiff there did not have to exhaust all domestic remedies as any appeal would have to be made to the next party conference which was two years away. In the meantime, the plaintiff's seat in Parliament would have been affected by the long wait. The domestic remedy clause in that case, unlike the one here, was merely a permissive one in any event. In the present case, the Plaintiff's office was essentially a voluntary service to the Tamil community. His livelihood was not affected in any way by the expulsion from office. He took no action and appeared to have accepted his expulsion between 1 March 2001 and his 19 November 2001 letter of demand. If he was serious about his office, there was ample time and opportunity for him to move for an EOGM. He ought to have done so before commencing his court actions.

131. The Plaintiff questioned the eligibility of certain persons to attend or vote at the 1 March 2001 special MC meeting. The minutes of that meeting indicated that care was taken to ensure that only persons eligible to attend the meeting were present. Jalaludin was excluded by the MC from voting although he represented an affiliated organization because he had not been registered. He was appointed a scrutineer without objection. Krishnasamy had resigned as an Internal Auditor at an earlier MC meeting but was entitled to be present and to vote as he remained a representative of an affiliated organization. The Plaintiff alleged his purported resignation as Internal Auditor was a manipulative step designed to allow him to vote as the TRC Constitution did not allow a member of the MC to be an Internal Auditor. His letter of resignation was not in the records of the TRC and a copy was said to have been retrieved from Krishnasamy's computer only during the course of the trial. However, it was signed. Even if he was not entitled to vote and his vote, assuming he did vote to expel the Plaintiff, was excluded, there would still have been more than a two-thirds majority. He also attended the 15 February 2001 meeting as such a representative without objection from the Plaintiff or any other person. Two ladies were present by virtue of their positions in the Women's League. The Plaintiff also suggested that the meeting had been "loaded" with people who were either related to or were employed by the President and the Deputy President. I see no merit in this submission if they were eligible to attend and to vote. Would the Plaintiff likewise disqualify his friends and allies from voting in his favour?

132. The 1 March 2001 meeting was called as a special disciplinary meeting to deal with the case against the Plaintiff. The members accepted the decision not to circulate the minutes of the 15 February 2001 meeting which were read out in any event. In any case, the absence of the said minutes did not place the Plaintiff at a disadvantage in his defence at the 1 March 2001 meeting. I do not see the failure to produce written minutes as evidencing bad faith. The Plaintiff also said the minutes of the previous meetings did not show that he was constantly rehashing the Niru issue but that he was merely responding to the chairperson who had raised the issue. Minutes vary in their details according to the recorder and the person who approves them. I am satisfied from the evidence of the Defendants and from the motions passed at the meetings that it was the Plaintiff who constantly sought to re-open the Niru issue with increasing vehemence and rudeness as time passed.

133. The apparent speed at which the special meeting was convened so soon after the 15 February 2001 one was again no evidence of bad faith. The MC needed to find a quick solution to the internal problems plaguing and paralyzing it in its functions. The Plaintiff did not say he did not have sufficient time to prepare his written defence. Indeed, he managed to submit it two days before the stipulated deadline. There was also no requirement that the notice convening the special meeting should be sent out only after receipt of the Plaintiff's response.

134. Standing Orders were within the province of the MC to make for the orderly conduct of meetings. Indeed, they would not have been necessary at all if members could exercise restraint and show courtesy to one another and in particular to the person chairing meetings. As things turned out, they became necessary because of the behaviour of some members of the MC. Nevertheless, the Standing Orders pertaining to the time limit for speaking were not invoked ruthlessly or at all on the Plaintiff or anyone else at the 1 March 2001 meeting. As the evidence showed, whether there were Standing Orders or not, the Plaintiff was not one who was concerned about such niceties. He went on to speak as he wished and when he was done, walked out with his allies. He had enough time to make his oral defence in addition to his written one which was read out in English and interpreted in Tamil. The MC proceeded on a lesser number of charges instead of the original five in the 16 February 2001 show cause letter but that surely could not have caused the Plaintiff to suffer any disadvantage.

135. Where the discrepancies in documentation were concerned, the Defendants should have been more careful in the keeping of their records. I accept that the discrepancies were a result of carelessness rather than dishonest intent as the Defendants would gain no real advantage from the wrong versions. Their carelessness resulted in some unnecessary debate during the trial and would be taken into

consideration in my order concerning the costs of these proceedings.

136. Where Theyvendran's alleged pre-elections undertaking was concerned, I would only observe that it was in the context of both he and Niru running for office. Since Niru had decided not to run for office, the undertaking became quite irrelevant. It was not the case that Theyvendran had undertaken that he would bring Niru into the MC notwithstanding his decision to decline to contest the elections. To do so would require the President asking an elected member to resign to give way to Niru and that would surely be a breach of faith with the members who had voted that member into office. In any case, even if there was breach of an undertaking by the President, the way to sanction him was not by way of discourtesy and disruptive repetition of the Niru issue at MC meetings. The Plaintiff was no stranger to motions of no confidence against incumbent office holders.

137. The Plaintiff asserted that he was upset in November 2001 because the documents despatched to the members of the TRC in advance of the AGM 2001 indicated that he was no longer a member of the TRC as opposed to not being a member of the MC. However, his letter of demand of 19 November 2001 concerned his office. In addition, he did not attend any more MC meetings after his expulsion on 1 March 2001. Even if he was not informed about future MC meetings because the General Secretary no longer sent him notice of such, he knew that there must be a meeting every month under the TRC Constitution and would have asked about this. His sudden resurrected interest in his office made the Defendants' allegations, that he was lying in wait and had timed his actions to coincide with the upcoming AGM to intimidate, harass and embarrass them, completely believable. The Plaintiff also chose not to attend the AGM 2001 and the AGM 2002 except by "proxy" and by the surreptitious recording of the speeches made. If indeed he was of the view that he remained a member of the MC, why did he not attend such important annual events like the AGM? I disbelieved his assertions that he knew he could get no justice from attending a meeting controlled by Theyvendran. Perhaps the chain of events from November 2001 was the "earthquake" he foretold.

138. There was therefore no breach of any tenets of natural justice. The Defendants dealt fairly with the Plaintiff even though there were mistakes as to form committed along the way. The Plaintiff was properly and validly expelled from the office of Deputy General Secretary on 1 March 2001. The President, the Deputy President and the General Secretary were upset or perhaps even exasperated by his conduct at meetings, as would any other reasonable person, but they bore no malice against him. As the key appointment holders and being part of the MC, they had no choice but to present the facts of the case and their allegations against the Plaintiff at the special meeting.

139. In the light of the above, I do not see how the words complained of in the Annual Report could be said to be defamatory of the Plaintiff. They were true and were expressed in unemotional terms which were totally devoid of judgment. As for the allegations concerning the Peravai and the minutes of the AGM 2001, the Plaintiff chose to read the words as meaning that he had been expelled from the TRC altogether. That would be putting a strained and unreasonable meaning to the words in the context in which they appeared. At any rate, the MC had informed the AGM 2001 about the Plaintiff's letter of demand and his writ of summons and there could not have been any misunderstanding that the Plaintiff was expelled from the TRC and not merely the MC. If Moganaruban's words that the Plaintiff was using legal action to threaten the organization were defamatory, they were perfectly justified and were fair comment in the circumstances I have indicated above. It should also be noted that the President made the clarification, although not obliged to and despite the Plaintiff's curt reply in his solicitors' letter, about the Plaintiff's status at the AGM 2002 anyway.

140. The Plaintiff's actions against all the Defendants were accordingly dismissed. In view of the TRC's carelessness in maintaining the records and the errors committed during the disciplinary proceedings, I felt it was fair that the Defendants should not be awarded the entire costs of the proceedings. I therefore ordered the Plaintiff to pay 70% of the costs of the actions and directed that there should be only one bill of costs. The Defendants asked me to make an order for costs against Niru primarily on the grounds he was the driving force behind the Plaintiff's actions which were for his benefit and he was the Plaintiff's financier. I declined to do so as the cross-examination of Niru did not adduce sufficient material to justify such an order against a non-party to the proceedings.

Sgd:

Tay Yong Kwang

Judicial Commissioner

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