

(2016) 08 MAD CK 0132

MADRAS HIGH COURT (MADURAI BENCH)

Case No: W.P(MD) No. 5782 of 2016

Kallar Kalvi Kazhagam
Usilampatti

APPELLANT

Vs

District Registrar
(Admn)

RESPONDENT

Date of Decision: Aug. 1, 2016

Acts Referred:

- Tamil Nadu Societies Registration Act, 1975 - Section 16(3)(b)

Citation: (2016) 2 CWC 779 : (2016) 6 MLJ 568

Hon'ble Judges: Mr. M. Venugopal, J.

Bench: Single Bench

Advocate: Mr. Veera Kathiravan Sr, Counsel, for the Petitioners; Mr. K. Mahesh Raja Govt.
Advocate, for the Respondents

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Mr. M. Venugopal, J.—Heard both sides.

2. Counter of First Respondent is filed.

3. No counter is filed on behalf of Second Respondent.

4. By consent, the main Writ Petition itself is taken up for final hearing.

5. The Petitioner/Society has preferred the instant Writ Petition before this Court praying for passing of an order by this Court in calling for the records relating to the impugned order of the First Respondent in Na.Ka.No.4700/A2/2005, dated 03.12.2015 and the consequent impugned order of the First Respondent in Na.Ka.No. 4700/A2/2015, dated 21.12.2015 and to quash the same. Further, the Petitioner/Society has also sought for passing of an order by this Court in directing

the First Respondent/The District Registrar (Admn), Periyakulam, Theni District, to accept the Form - VII, presented by Petitioner and further direct the Second Respondent to approve its Educational Agency, for the tenure of office for a period of three years from 30.11.2015.

6. According to the Petitioner, it is an Educational Agency for Art and Science College, by name, PMT College, Usilampatti and around 3000 students are studying in the said College. As a matter of fact, the Petitioner/Society is conducting several educational programmes both under UG & PG and it is one of the reputed colleges in the suburban of Madurai District.

7. It comes to be known that there was a dispute arose relating to the conduct of election to the Educational Agency, resulting in filing of W.P.(MD)No.9008 of 2013 filed by one P.V.Kathiravan. The said Writ Petition was projected for the purpose of appointment of an Administrator, for conducting election for the Management Committee of the Educational Agency. In the said Writ Petition, on 26.04.2016, this Court, at paragraph No.2, had observe as follows:-

"2.The petitioners in W.P.(MD)Nos.3611 and 5129 of 2013 jointly submitted that a former Judge of this Court should be appointed for the purpose of conducting the election to the Society. Accordingly, I have appointed the Hon"ble Mr.Justice P.Shanmugam, former Judge of this Court as the Administrator. However, the learned Judge expressed his difficulty on account of certain personal reasons. Therefore, I am of the view that another learned former Judge of this Court should be appointed as the Administrator."

8. Further, at paragraph No.3 of the aforesaid order, The Hon"ble Mr.Justice E.Padmanabhan, residing at No.11, Madha Church Road, Mandavelipakam, Chennai-28, had been appointed as Administrator, in modification of the earlier order, dated 15.04.2013. Further, the Administrator was requested to take charge immediately and to conduct the election, in accordance with the order, dated 15.04.2013. Moreover, it was made clear that the order, dated 15.04.2013, would remain in all other aspects.

9. It is to be noted that later on, the order of the Administrator was questioned by some of the contesting parties in W.P(MD)No.9223 of 2013, W.P(MD)No.9008 of 2013 and W.P(MD)No.10045 of 2013. By a common order in M.P.(MD)Nos.2,2,2 and 3 of 2013 in W.P.(MD)Nos.9223, 9008 and 10045 of 2013, this Court pass an order on 25.02.2014 to finalise the electoral college (voters) for the election, as per the Bye-laws. In fact, the Hon"ble Administrator, after considering the objections, finalised the voters" list and communicated the same to this Court.

10. At this stage, the Learned Senior Counsel for the Petitioner/Society brings it to the notice of this Court that subsequent proceedings of the Hon"ble Administrator was quashed in M.P.(MD)No.213 of 2013 in the aforesaid W.P.(MD)No.9008 of 2013, wherein, this Court finally concluded the election process and the Hon"ble

Administrator was permitted to conduct the election, as per the Bye-laws as well as the procedures stipulated by this Court. Furthermore, the said order was questioned by way of Writ Appeal in W.A(MD)No.1078 of 2015 and the same was dismissed, on 04.11.2015. After dismissal of the Writ Appeal, the election was conducted by the Hon'ble Administrator, on 29.11.2015, as per the Bye-laws and the Secretary of the College viz., P.Pandian, was elected (one who sworn to the affidavit of the Society).

11. The real grievance of the Petitioner/Society is that the Hon'ble Administrator gave Certificate of Election of all the elected office bearers and also direct the elected Secretary to assume charge, as per the final decision of election. After completion of election by the Hon'ble Administrator appointed by this Court, Form-VII was to the First Respondent/District Registrar (Admn), Periyakulam, Theni, for his approval and also to approve the Educational Agency and its office bearers on the file of the Second Respondent/Director of Collegiate Education, Chennai. However, to the shock and surprise to the Petitioner/Society, the First Respondent/District Registrar (Admn), Periyakulam, Theni, in Na.Ka.No.4700/A2/2005, dated 03.12.2015, and in Na.Ka.No.4700/A2/2015, dated 21.12.2015, had refused to accept the Form VII or take the same to file.

12. The Learned Senior Counsel for the Petitioner/Society urges before this Court that Form VII was not approved by the First Respondent/District Registrar (Admn), Periyakulam, Theni. The Petitioner/Society could not obtain a permanent approval of the Educational Agency before the Second Respondent/Director of Collegiate Education, Chennai - 6 and the Second Respondent, by means of proceedings, dated 28.12.2015, approved the Educational Agency only upto 29.11.2015, quoting the pendency of the earlier Writ Petition. On 17.12.2015, all the three Writ Petitions projected by the parties were finally disposed of by this Court holding that the Writ Petitions became infructuous, in view of the conduct of election.

13. Therefore, on the side of the Petitioner Society, an argument is advanced before this Court that there is no bar in permitting the Educational Agency for change of Management duly approved by the Second Respondent/Director of Collegiate Education, Chennai - 6. In short, the bone of contention advanced on behalf of the Petitioner/Society is that the First Respondent/District Registrar (Admn), Periyakulam, Theni, had refused to accept Form VII of the elected body, which act is highly irregular and illegal one besides violative of principles, procedures enshrined under the Tamil Nadu Societies Registration Act, 1975 (Act 27 of 1975).

14. Also, on behalf of the Petitioner/Society it is brought to the Notice of this Court that a civil Suit in O.S.No.245 of 2015, on the file of the Learned District Munsif-cum-Judicial-Magistrate, Usilampatti is pending. Further, it is the case of the Petitioner/Society that the said Suit is not maintainable, since the Election Officer was not arrayed as a party. There is no dispute with regard to conduct of election conducted by the Administrator. In short, the stand of the Petitioner is that the Petitioner/Society, has a prima facie case and balance of convenience in its favour.

Under these circumstances, the Petitioner/Society has filed the present Writ Petition.

15. At this stage, the Learned Senior Counsel for the Petitioner/Society vehemently contends that Section 16(3) of the Tamil Nadu Societies Registration Act, 1975 enjoins as under:-

"16. Accounts and Audit:-

(I).

(ii).

(iii). Every Registered Society shall :-

(a) within such period as may be prescribed under the expiration of each financial year, place before the general meeting the receipts and expenditure account and the balance sheet together with the report referred to in sub-section(2) duly signed by the auditor or the members appointed under sub-section(1) and the members of the committee; and

(b) within such period as may be prescribed after the date of such general meeting, file with Registrar:-

(i) an authenticated copy of such receipts and expenditure account, balance sheet and report.

(ii) a statement of the name, addresses and occupations of the persons who, at the expiry of the financial year, were members of the registered society; and

(iii) a declaration to the effected that the society has been carrying on business or has been in operation during the financial year."

16. Further, it is the plea of the Petitioner/Society that in reality, the ingredients of Section 16(3) of the Tamil Nadu Societies Registration Act, 1975, does not make it a pre-condition for filing of the accounts in respect of the preceding years, for obtaining an approval, in respect of Form VII and in the absence of the same, the impugned order, dated 03.12.2015 of the First Respondent/District Registrar (Admn), Periyakulam, Theni, in keeping the Form VII pending and the subsequent impugned order, dated 21.12.2015, refusing to approve Form VII are clearly bad in Law.

17. Per contra, It is the submission of the Respondent Nos.1 and 2 that the Annual Returns of the Petitioner/Society was not furnished for the period preceding to election and moreover, the Head of the Department viz., Inspector General of Registration, in Circular No.7 of 2011, dated 27/07/2011, had direct that earlier filing of the decision and Resolution of the General Body also would have to be verified and earlier Forms V & VII are to be scrutinized.

18. Apart from that it is the stand of the Respondents that it is the duty of the Writ Petitioner to collect information on the previous office bearers, including the Hon"ble Administrator, by way of a detailed report for the interregnum period for which there was no filing of reply or return. Also that, the First Respondent may not have any difficulty in accepting the Form VII of the present team of office bearers, provided the earlier annual returns and other statutory records prescribed in the Act, are to be filed periodically and produced by the present office bearers. Furthermore, yet another plea is taken on behalf of the Respondent that Form VII was not returned by the First Respondent and it is only kept pending viz., filing being suspended and that too for valid reasons.

19. In this connection, this Court very significantly points out that a mere running of the eye over the ingredients of Section 16(3)(b) of the Tamil Nadu Societies Act, 1975 (referred to in the impugned order, dated 03.12.2015 and 21.12.2015) do not express and that too, in an arriving unhearing fashion points out about the filing of the account in respect of preceding years to be the guiding factor or as a condition precedent for approving the Form VII.

20. As a matter of fact, the obvious reference to the Circular No.7 of 2011 of the Inspector General of Registration, bearing No.34579/I1/2011, dated 27.07.2011, as mentioned in the impugned order, dated 21.12.2015 of the First Respondent /District Registrar (Admn), Periyakulam, Theni, cannot override the ingredients of a particular enactment/statute framed by the Legislatures. As such, this Court comes to an consequent conclusion that the impugned order, dated 03.12.2015 and 21.12.2015 of the First Respondent/District Registrar (Admn), Periyakulam, Theni, and interferes with the same in furtherance of substantial cause of justice and sets aside both the orders. Viewed in that perspective, the Writ Petition succeeds.

21. In the result, the Writ Petition is allowed leaving the parties to bear their own costs. The impugned order, dated 03.12.2015 and 21.12.2015 of the First Respondent/District Registrar (Admn), Periyakulam, Theni District, are set aside by this Court for the reasons assigned in the present Writ Petition. Since this Court has allowed the present Writ Petition, as a logical corollary, this Court directs the First Respondent/District Registrar (Admn), Periyakulam, Theni, to approve the Form VII of the Petitioner/Society (which was submitted before him) within a period of two weeks from the date of receipt of a copy of this order and to take consequential action in the manner known to law and in accordance with law. Consequently, connect Miscellaneous Petitions are closed.