
(2007) 08 MAD CK 0137

In the Madras High Court

Case No : Writ Petition No's. 45507 and 50272 of 2006

A. Jeba Singh Prasad and Others

APPELLANT

Vs

The General Manager, Southern Railway and Others
M.
Natarajan Vs The Registrar of Societies, Chief Personnel
Officer, Southern Railways and All India Other Backward
Classes Railway Employees Association

RESPONDENT

Date of Decision : 14-08-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Societies Registration Act, 1975 — Section 14, 26, 28, 34, 34A
Tamil Nadu Societies Registration Rules, 1978 — Rule 17, 25, 25(2), 27

Citation : (2007) 08 MAD CK 0137

Hon'ble Judges : Chitra Venkataraman, J

Bench : Single Bench

Advocate : R. Raman Laal, for the Appellant; V.G. Suresh Kumar, for the Respondent

Judgement

Chitra Venkataraman, J.—W.P. No. 45507 of 2006 is by the members of the Association seeking a writ of Certiorari to quash the

proceedings of the third respondent, namely, the Registrar of Societies, Chennai Central, relating to the registration of Form VII dated

29.10.2006. filed by the fifth respondent therein. W.P. No. 50272 of 2006 is by an individual member of the association for a writ of Certiorari

Mandamus to call for the records of the Registrar of Societies accepting Form VII dated 29.10.2006, to quash the same and to direct the

Registrar of Societies to convene the General Body or Extraordinary General Body Meeting of the third respondent society in accordance with the

provisions under the Tamil Nadu Societies Registration Act, 1975.

2. The facts leading to the filing of these writ petitions arose in this manner:

The All India Other Backward Classes Railway Employees Association was formed in the year 1994, recognised by the Union Railway Ministry.

It is a Society registered under the Societies Registration Act. The Association byelaws provide for election of office bearers at different levels.

Under byelaws No 11, the Branch President, Branch Secretary and the Branch Treasurer, all Divisional Office bearers and all Zonal Office

bearers alone are eligible to participate in the elections and the Annual General Body Meetings. The Electoral College consisting of the list of

delegates constituting the Electoral College, is normally published by the Railway Administration to participate in the election in the Annual General

Body Meeting. It is stated that the Railway Administration has to call for the list of office bearers from the Branch, Divisional and Zonal level

before the publication of the Electoral College.

3. The petitioners submit that during the year 2002, a list of delegates was published by the first respondent, namely, the General Manager,

Southern Railway. The election was held on 24.2.2002. Considering the complaints received regarding the list of delegates, the first respondent

declared the election held on 24.2.2002 as null and void. The Railway Administration gave direction for the conduct of fresh election on

7.12.2003, enclosing the list of eligible delegates. The Chief Personnel Officer issued an instruction dated 19.5.2004 for the subsequent election.

4. It is stated that the said action was challenged in the writ proceedings before this Court in W.P. Nos. 33515 and 36218 of 2003. By order

dated 5.4.2004, this Court constituted a committee of Advocates to conduct the election. Thereafter, this Court constituted another committee

headed by Sri. R. Gandhi, learned senior Advocate, to conduct the election.

5. It is seen that the third respondent, the Registrar, agreed to nominate an observer to oversee the election process. The allegation is that the

fourth respondent herein, namely, J.K. Pudhiyavan, continued to act as the General Secretary without conducting any election in violation of the

norms and the byelaws.

6. It is stated that the elections were held by the Committee under the Chairmanship of Mr. R. Gandhi, learned Senior Advocate. On 26.1.2005,

the office bearers were elected to the Annual General Body Meeting for this purpose, and as per the byelaws, the term of the office bearers was to

come to an end on 26.2.2007. It is stated that the General Body had to be convened on or before 30th September of every year. The elections for

the year 2007-08, in the circumstances, ought to have been conducted in the general body meeting on or before 30.9.2006. The petitioners herein

stated that the Electoral College is to be drawn from the entire Tamil Nadu, Kerala and parts of Andhra Pradesh. There are five Divisions from the

above States and each Division had many branches. The elections are to be held from the branch level to the zonal level for drawing the delegates.

It is further stated that the first respondent had not published the list of office bearers from the branch, divisional and zonal level, which is absolutely

essential for conducting the elections as well as for the Annual General Body Meeting. It is stated that the petitioner in W.P. No. 45507 of 2006

wrote a letter on 9.9.2006 to respondents-1 to 3 for the due publication of the list. However, without taking any steps to verify and enrol

membership and without proper representation from all levels, in the manner contemplated under the byelaws, the fourth respondent conducted the

election and prepared the list of office bearers of his choice. The specific allegation of the petitioner herein is that the fourth respondent had

neglected the interest of the branches in Tiruchirapalli, Madurai, Palghat, Trivandrum regions whose names do not find a place in the electoral list

for no reason at all and thereby the interest of the Other Backward Class employees itself are totally neglected. The petitioners stated that the

Electoral College without representation from all levels would be incomplete and the first and second respondents have not done anything to ensure

representation from all levels.

7. The petitioners state that 21 clear days" notice is mandatory for convening the Annual General Body Meeting. Due publicity about the date of

nominations in various posts has to be followed. The petitioners alleged that there was no proper notice for convening the Extraordinary General

Body Meeting. However, the fourth respondent attempted to convene a meeting without proper notice. The petitioners alleged that the fourth

respondent, without any regard to the representation made to respondents-1 to 3, convened an Extraordinary General Body Meeting on

29.10.2006 and got himself elected along with some of his friends. The fourth respondent lodged Form VII before the third respondent for

registering the same. The action of the third respondent in accepting Form VII is now challenged as arbitrary on the ground that the fourth

respondent had not followed the procedure laid down under the byelaws of the Societies Registration Act and that the third respondent's

acceptance of the Form without any enquiry and without adverting to the complaints by the petitioner is bad in law. The petitioners alleged that

there was no Extraordinary General Body Meeting held on 29.10.2006 in accordance with the byelaws as claimed by the fourth respondent.

8. It is contended that the Extraordinary General Body Meeting could be convened only on written representation or for a specific purpose. Rule

25(2) of the TNSC Rules prescribes the mode of sending notice. According to the petitioner, no notice was sent to any one by the fourth

respondent. They also alleged that there was no free and fair election and that there was no meeting conducted; Form-VII and other documents

are all created documents; as such, without ascertaining whether the meeting was conducted as per the mandate of the Societies Registration Act,

the third respondent Registrar could not accept Form-VII. Quoting Section 34A, the petitioner contends that the third respondent has got powers

to initiate action and supersede the Committee.

9. The writ petitioners in W.P. No. 50272 of 2006 stated that they have sent an objection as early as 2.9.2006. It is also stated that the petitioner

sent a representation on 3.10.2006 to the Inspector of Police, Chennai, and a copy of the same was also sent to the first respondent Registrar, but

without considering the objections sent as regards the affairs of the Society as to the manner and conduct of the election, the action of the first

respondent Registrar in accepting the same without any enquiry is totally bad in law.

10. The writ petitioner in W.P. No. 50272 of 2006 submits that as per the decision of a Division Bench of this Court reported in 1994 WLR 779

Arivanandhapandian, K an Anr. v. Nadar Mahajana Sangam, Etc., and 3 Ors., the Registrar was bound to conduct an enquiry u/s 36 to find out

as to whether Form-VII could be received or not. It is further submitted that for the purpose of receiving Form-VII, the Registrar should see that

the prescriptions under Sections 26 and 28 of the Act are strictly complied with in terms of Rules 25 and 27 of the Rules. The petitioners alleged

that there was no General Body Meeting held on 29.10.2006. There was no notice sent as regards the alleged meeting. The petitioners alleged that

the administration of the Society by the alleged office bearers is in utter violation of the objects and the byelaws of the society. In the

circumstances, the present prayer is made.

11. On notice, the respondent, General Secretary of the Association, the third respondent herein in W.P. No. 50272 of 2006 has filed a counter

affidavit stating that the third respondent Association is a private Association registered under the Societies Registration Act. It is stated that the

issue under challenge in the writ petition is the election of office bearers to the Society and the acceptance of the results by the Registrar of

Societies and the Railway Administration acting upon the same. Being in the nature of a private dispute, the same could not be agitated under

Article 226 of the Constitution of India. The third respondent Association Secretary has also taken a stand that the writ petitioners are not even

members of the Association as on the date when the elections were held or even on the date when the writ petition was filed; as such, the writ

petition was not maintainable. Referring to the byelaws of the Association, it is contended in the counter affidavit that the admission of the

association ceases on the expiry of the 31st March of every year and hence, the membership has to be renewed within one month from the expiry

date. As regards the writ petitioner in W.P. No. 50272 of 2006, he had given a letter to renew his membership and his request could be

considered only for the next year and as far as the current year is concerned, the writ petitioner is not a member of the Society. The mere issuance

of the receipt bring about an obligation not recognised him as a member eligible to participate in the affairs of the society or questioned any of the

proceedings. The third respondent contended that the Extraordinary General Body Meeting was convened in accordance with the byelaws on

29.10.2006 and the office bearers were elected by the majority of the delegates. The procedure of giving 21 days' notice was strictly complied

with in the matter of conduct of the election. They also denied their knowledge as to the representation made to the Railway Administration on

2.9.2006. They defended their action that the Electoral College was drawn from every branch of the association to whom notice was issued as

regards the convening of the Extraordinary General Body Meeting and questioned the locus standi of the petitioner to file the writ petition. As to

the power of the Registrar to hold enquiry before accepting the Form-VII filed, the respondents contended that the Registrar has no power or

authority to conduct any enquiry as to the election held. Referring to the earlier elections held, the respondents submitted that the tenure of the

Zonal office bearers was for a period of two years from 26.1.2005. The office bearers as stated in Form-VII were elected in accordance with the

byelaws. It is further submitted that the General Secretary acted in accordance with the byelaws and corresponded with the Railway

Administration. Considering the fact that there was no violation of the byelaws and having regard to the nature of the power of the Registrar as

regards the results of the election conducted and the results as disclosed in Form II as laid down by the decision of the Full Bench reported in

2005 II LW 550 CMS. Evangelical Suvi David Memorial Higher Secondary School Committee v. The District Registrar, Cheranmahadevi and

Four Ors., the petitioners cannot question the action of the Registrar concerned. They further submitted that the Registrar had no power of enquiry

to adjudicate upon any claims. The correctness or otherwise of Form-VII is a matter to be decided before a proper forum in the civil court and not

in writ proceedings. He also submitted that u/s 36, the Registrar was not empowered to adjudicate on the conflicting claims to represent the

society. In the circumstances, the petition was liable to be dismissed.

12. A reply is filed by the writ petitioners in both the writ petitions wherein it is submitted that as per the byelaws of the Association, Branch

Presidents, Branch office bearers, Divisional office bearers, Zonal office bearers are all delegates to take part in the election. Without finalising the

names of the delegates, the election could not be conducted. Without the approval of the Railway Administration to the list before the conduct of

election, the election could not be said to be properly conducted. The petitioners alleged that the contention that the procedure was meticulously

followed and the eligible list of delegate members were drawn, proper notice given, thus the election held in accordance with the byelaws on

29.10.2006, are all factually incorrect. They submitted that there was no notice sent to the eligible persons as on 3.10.2006 for the Annual General

Body Meeting. They also alleged that the Railway Administration or the Registrar did not take any action on the allegations sent. It also alleged that

the Railway Administration has a duty to see that the elections are conducted in a fair and free manner. The election of the Governing Body could

be only in the General Body Meeting and not in an Extraordinary General Body Meeting and hence, when there was no Annual General Body

Meeting, the contentions of the Secretary and the present team would be absolutely void.

13. Mr. T.R. Rajagopalan, learned senior Counsel appearing for the writ petitioner in W.P. No. 45507 of 2006 referred to Bye-law 21 relating to

the convening of the Annual General Body Meeting at Zonal level and Bye-law 22 referring to the Extraordinary General Body Meeting. Referring

to byelaw 21, he submitted that the Annual General Body Meeting of the Association could be convened each year on a day and time fixed by the

Executive Committee to transact the following:

(a) To conform the minutes of the previous general body meeting.

(b) To adopt annual reports and audit statements of accounts.

(c) To elect office bearers and commit members once in two years by secret ballot system except for those who are being selected unanimously.

(unopposed).

(d) To appoint auditor for the year.

(e) To consider any other points put forth for discussion by any member. The quorum of the General Body meeting shall be 1/3 of the total

working committee members viz., all ZEC, DEC, members Branch President, Secy. & Treasurer at Zonal level. At central level the quorum shall

be 1/3 of total zonal Executive Committee members. The 21 days clear notice shall be given to all w.c. members by post and shall specify the date,

hour and place of G.B.

14. Under by law 22, an extraordinary general body meeting convened by the General Secretary for any specific purpose or on the requisition of

the members of the Association, executives by at least one-fourth of the members of the society. Other conditions are the same as for the General

Body Meetings. Both these meetings contemplate 21 days" clear notice. He submitted that admittedly, there was no Annual General Body Meeting

conducted. Learned senior Counsel appearing for the petitioner submitted that the election of the office bearers is only under the Annual General

Body Meeting and not under the Extraordinary General Body Meeting. Touching on the wordings in Bye law 21 relating to the convening of the

Extraordinary General Body Meeting, learned senior Counsel submitted when the convening of a meeting for holding the election is only under the

Annual General Body Meeting, conducting the same in an Extraordinary General Body Meeting without any reference is not properly explained at

all by the respondents herein. He submitted that in the absence of any specific provision in byelaw 22, there is no question of holding an election

under an Extraordinary General Body Meeting. Referring to the report of Mr. R. Gandhi, learned Senior Advocate, he submitted that the

requirements to be followed as regards the conduct of election are clearly given in the same and the nomination has to be in terms of the form

prescribed. The number of delegates as per the list prepared under the chairmanship of Mr. Gandhi was 229. The list of delegates constituting the

Electoral College eligible to participate in the election must be published by the Railway Administration. Since the list which was drawn in the

earlier election had not undergone any change, the fact that the petitioners herein were never issued of any notice as contemplated under the bye

law clearly prove that there was no compliance or fairness in the holding of election. He referred to paragraph 8 in the vacate stay petition that the

eligible list of delegate members to participate in the election for constituting the zonal committee was duly prepared and that the notice of the same

was sent to the delegates on 3.10.2006 under certificate of posting as per the byelaws of the association and it is stated to be a sufficient notice.

He also referred to paragraph 13, wherein, the third respondent Secretary had stated that the list relating to the earlier election were not material

for the present case and that he had relied on Section 26 of the Societies Registration Act as wholly unwarranted on facts since there was no

change as to the membership in the electoral college. He made specific reference to the members from Madurai and other divisions not finding

place in the present list and submitted that there were no reasons given for not showing their names in the electoral list.

15. Countering the averment in the counter affidavit as to the list of members in the electoral college, learned senior Counsel took me through the

details of members, particularly with reference to Palghat, Trivandrum and Madurai Division to show that the membership list relied on by the

Secretary contained 133 members alone omitting the other members and that the same was in contrast to the earlier list of 229 members which

remained unexplained. No materials were placed at any point of time to show as to how the members of the Electoral College came down to 143

members. He further submitted that when the election conducted under the Chairmanship of Mr. Gandhi, learned senior Advocate was very much

having its validity till 26.1.2007, there was no necessity at all to hold an Extraordinary General Body Meeting to have the election conducted and

no explanation is forthcoming for conducting the election. He also questioned the total absence of a schedule either for the meeting or for the

election. He referred to the notice dated 18.9.2006 and submitted that there was no action either from the third respondent Registrar or by the

Railway Administration to ensure a fair and free election. He pointed out to the fact that there was no meeting either to the Zonal or Divisional

office bearers in the executive committee level or in the Working Committee level to discuss the agenda for any election. He submitted that the

objections and the lapses were already brought to the attention of the authorities concerned as early as 18.9.2006 for which absolutely there was no

action. He also pointed out to the contention that the present General Secretary should not be allowed to publish the list of office bearers without

the approval of the Headquarters of the Southern Railway. He hence called upon the Administration to ensure a fair election of the delegates in the

lower level, particularly, the entire Southern Railway, before the election was conducted at the higher level. He pointed out that there was

absolutely no material in the counter affidavit as regards the reduction of the number of members; no materials are disclosed as regards the strength

of members reduced from 229 to 133 and there are no details disclosed as regards the schedule placed for election.

16. Learned senior Counsel made his submissions as regards the jurisdiction of the Registrar to accept Form-VII without any enquiry and

submitted that the Full Bench decision of this Court reported in 2005-II-L.W. 550 clearly held that when the exercise of power is arbitrary, the

same is amenable to challenge in the writ jurisdiction. He particularly laid emphasis on paragraph 18 to say that the power of the Registrar to call

for information u/s 34 to conduct enquiry is even though limited, enjoins a duty on the Registrar to see whether the constitution of the members are valid. When the authorities were already posted with the necessary details and the duty is there for the Registrar to see that the convening and holding of the General Body Meeting is in accordance with the byelaws, he is duty-bound to call for information to see the conduct and the administration of the affairs as in terms of the byelaws. He emphasized that the registrar has the statutory duty to regulate the affairs of the society in accordance with the provisions and the Rules made thereunder. When a specific application is brought before the authority concerned as regards the number of members eligible to vote and the manner of conduct of election, the mechanical acceptance of Form-VII without any reference to the allegations made is totally arbitrary. Hence in the above circumstances the one and only remedy available to seek redressal on the arbitrary exercise of the power and the failure to act in accordance with the duty casts under the Act is the writ remedy under Article 226 of the Constitution of India. Learned senior Counsel also referred to the decision of the Division Bench of this Court reported in 1994 LW 779 Arivanandhapandian, K and Anr. v. Nadar Mahajana Sangam, Etc., and 3 Ors., and submitted that the law laid down by the Division Bench as regards the scope of enquiry before acceptance of Form-VII still remains the same even under the decision of the Full Bench. In the circumstances with illegality writ large on the conduct of the election, the writ petition is maintainable. Considering the total absence of the enquiry, the order of the third respondent Registry being arbitrary, the same was liable to be set aside by this Court.

17. Mr. S. Subbiah, learned Counsel appearing for the petitioner in W.P. No. 50272 of 2006, submitted that the writ petitioner therein is the founder member. He adopted the arguments of the learned senior Counsel appearing for the writ petitioner in W.P. No. 45507 of 2006 and submitted that as early as 2.9.2006, this writ petitioner made a representation to the Chief Personnel Officer as well as to the Registrar of Societies that the delegates from Trivandrum and Palghat were not consulted nor given any position as a Division. He stated therein that the General Secretary of the Association was running the association without following the byelaws of the Association. The list of members is a fabricated list,

not actually signed by the members and that there was no organisation meeting either to the zonal, divisional or branch executive committee level or the working committee level held to discuss the agenda on the election. He also informed the Railway Administration Chief Personnel officer and the Registrar of Societies that the election to be conducted would have a bearing only on the delegates as per the eligible delegate list published on 19.5.2004 and 2005 and allowed to participate therein. He further stated that the General Secretary should not be allowed to furnish the list of office bearers without the approval of the Headquarters of the Southern Railway. Again, on 20.9.2006 and on 3.10.2006, the writ petitioner lodged his protest and called upon the respondent administration not to approve of the illegal methods of conduct of the election as proposed by the Secretary. He also requested an observer to be nominated by the Registrar of Societies for conducting a fair and free election, making the list of the delegates eligible to vote and to fix the date of the Annual General Body Meeting as well as the date for the election well in advance to have the notice to everyone concerned. These letters were sent by Registered Post. The election was conducted in the Extraordinary General Body Meeting on 29.10.2006. Thus the election held and Form-VII filed was in total violation and the respondents had not taken any steps to safeguard and ensure a free and fair election in accordance with the regulations. He also pointed out to the membership fee sent by him and the receipt issued to substantiate his plea that he still has his membership in the association. In the background of all these, learned Counsel appearing for the petitioner seeks to quash the order of the Registrar in approving Form-VII as in total non-application of mind; hence, in terms of the decisions of the Division Bench and the Full Bench, the action being arbitrary, the writ petition is maintainable and this Court has to consider the attitude of the Registry in mechanically receiving Form-VII. He brought to my attention paragraphs 8 and 9 in the decisions reported in 1994 WLR 779 Arivanandhapandian, K and Anr. v. Nadar Mahajana Sangam, Etc., and 3 Ors., and submitted that the Registrar, in exercise of his powers u/s 36, is bound to enquire to ensure whether the members of the Society had convened the election to the committee in accordance with law. He further submitted that the Registrar, for the purpose of the Act, is bound to see the correctness of list of members eligible to participate in the election. The

Division Bench had clearly stated that the Registrar order is amenable to the jurisdiction of this Court under Article 226 of the Constitution of India.

He referred to the letter dated 14.9.2006 written to the third respondent enclosing the membership fee and its renewal before conducting the

Annual General Body Meeting of the association. Having thus received the membership fee, the contention of the third respondent is not

sustainable either in law or on fact; in the circumstances, he prayed that the order be set aside.

18. Mr. AR. L. Sundaresan, learned senior Counsel appearing for the Secretary, referred to the allegations contained in the writ petition and

submitted that primarily the society is not a trade union. This society is a private body and the Railway Administration has no role to play. He

submitted that the election and other related matters are private matters which are outside the scope of Article 226 of the Constitution of India and

any aggrieved person could only challenge it before the civil forum. He submitted that the election conducted by the association are recorded and

thereafter alone, it goes to the Railways. Referring to the contention that the election could be conducted only in the Annual General Body Meeting

as per bye law 21, he submitted that there are no words of limitation under Byelaw 21, that the election could not be a subject matter for

consideration under the Extraordinary General Body meeting in accordance with bye law 22. The only difference between an Annual General

Body Meeting and an Extraordinary General Body Meeting is that the same could be convened only on a written requisition of the members of the

Zonal Executive Committee by at least one fourth of the members of the society. The Extraordinary General Body Meeting could be convened

only for a specific purpose, which may include all those business falling under Clause 21 relating to the convening of the Annual General Body

Meeting. He even went to the extent of saying that if the petitioners question the convening of the Extraordinary General Body Meeting for the

purpose of election, it could not be a subject matter of challenge before this Court. He referred to the notice dated 3.10.2006 as regards the

agenda on the Extraordinary General Body Meeting to be held on 29.10.1996 and submitted that one of the items therein was the election of

Zonal Office bearers of the society. In adherence to the resolution passed on 1.10.2006, the Working Committee Meeting election to those zonal

office bearers of association was taken up with the Extraordinary General Body Meeting and after long deliberations, the resolutions were passed.

The list of office bearers elected in the Extraordinary General Body Meeting were thus presented in Form-VII before the Registrar.

19. Touching on the role of the Registrar, he submitted that the Registration of Form-VII after the election conducted is only a formality, since the

Registrar, as such, has no adjudicatory role to play. He referred to the decision reported in 2005 II LW 550 Cms. Evangelical Suvi David

Memorial Higher Secondary School Committee v. The District Registrar, Cheranmahadevi and Four Ors., and referred to the terms of reference,

as per which, the question before the Full Bench was whether the Registrar has the power to enquire into the dispute relating to the election to the

members of the society. The Division Bench held that the power of the Registrar u/s 44 did not contemplate any adjudicatory role and that he has

power to arrive at a prima facie conclusion as per the correctness of the particulars given in Form-VII. He submitted that the Full Bench

categorical in stating that the Registrar could issue such direction only with reference to the details furnished in Form-VII and nothing beyond.

Hence, the power u/s 36 could not be stretched to go into a question of the membership or any other matter, which may require an adjudicatory

process. He also placed reliance on the decision reported in 2005 1 L.W. 793 S. Tamil Arasan v. R. Narayanan and Anr. and 2005 4 L.W. 605

Cms. Evangelical Suvi David Memorial Hr. Sec. School Committee, The District Registrar, Cheranmahadevi and Ors. and submitted that this

Court cannot go into the question as to the correctness of the action of the Registrar, and equally so, the Registrar, into the matters and what was

stated in Form-VII. He submitted that the Society is essentially a private Society and the affairs of the society, hence, was not amenable to the writ

jurisdiction. The Full Bench has categorically outlined the power of the Registrar. He also submitted that when the membership of the petitioners

are in question, the writ petition itself is not maintainable. Referring to the contention of the petitioner in W.P. No. 50272 of 2006, he submitted

that the receipt issued on the amount paid, by itself, did not mean that the membership was accepted. He placed reliance on the decision reported

in Avtar Singh Hit Vs. Delhi Sikh Gurdwara Management Committee and Others, that questions which involve factual aspects and are

determinable only on evidence cannot be canvassed under Article 226 of the Constitution of India and hence, submitted that the writ petition is liable to be rejected.

20. The Southern Railway, on its part, has filed a formal counter affidavit to support the action of the society and submitted that the Railway Administration recognised the association to look after the welfare of the Other Backward Classes employees and does not take any side over any other group in the association.

21. As regards the Registrar of the Society, Mr. P.S. Raman, learned Additional Advocate General, submitted that in terms of the decision of the Full Bench, the role of the Registrar is only that of a Record Keeper and he has no adjudicatory power. Referring to Section 34, learned

Additional Advocate General submitted that the Registrar may, on perusal of any document required to be filed, can call upon a Registered society to furnish such information and explanation with reference to any matter to which such document purports to relate and that on receipt of such explanation or information, the Registrar has to annex the same to the original document filed with him. The power u/s 34, hence, is restricted only

to such of those matters which has relevance and relate to the document produced before him on which he seeks information. The

requisition, hence, offers no room for his adjudication as to the correctness or otherwise on the information sought for under this provision. He

referred to Rule 17 and submitted that the same has to be read in terms of the provisions u/s 34. Considering the restricted nature of this power,

the Registrar has no authority at all to go beyond to adjudicate on as in the case of a civil dispute. He referred to Section 36 and submitted that the

Registrar, on his own motion, or on the application of the majority of the members of the committee, or on the application of one-third of members

of that society, hold an enquiry into the constitution, working and financial condition of that registered society. The application to the Registrar must

be supported by such evidence as may be required for the purpose of maintaining an application. He submitted that the scope of enquiry hence, in

any event, cannot go beyond what was contemplated u/s 36 as regards the constitution, working and financial condition, and that has nothing to do

with the scope u/s 34. He submitted that the scope of this Court's jurisdiction in

terms of the Full Bench decision, hence, is restricted. In a case where the Registrar approves the Form u/s 34, he was bound to satisfy himself and form an opinion as regards what are required to be stated and where no such enquiry is taken up, that would be a case of arbitrary exercise to be checked on by this Court. Learned Additional Advocate General also produced before this Court, the records pertaining to the approval.

22. In reply, learned senior Counsel appearing for the petitioner submitted that the prayer before this Court by the writ petitioner herein is not for the purpose of setting aside the election. He submitted that the respondent had neglected the interest of the branches of Trichy, Madurai, Trivandrum and Palghat and other areas where the interest of the Other Backward Class employees are not taken into consideration. He referred to the earlier election conducted under the Supervision of the Advocate appointed by this Court; that the present election has been conducted without observing the requirements under the byelaws.

23. He submitted that without the election conducted without the full Electoral College, the election of the office bearers is null and void. He submitted that there is no counter affidavit on the allegations as stated above, and there are no reasons for showing the reduction of membership to

143. The original list prepared by the Advocate Commissioner still has a relevance. Without a proper enquiry into this reduction, there is no satisfaction arrived at even as per paragraph 19 of the Full Bench decision of this Court, this Court is bound to exercise its jurisdiction.

24. Mr. S. Subbiah, learned Counsel appearing for the writ petitioner in W.P. No. 50272 of 2006, submitted that the counter affidavit filed by the Registrar contains no details and that the same was filed only after the arguments commenced. He further submitted that there was no reply from the Registrar to the representation made by him as to the unfairness in the treatment. The Registrar is bound to consider the representation in terms of Section 26 of the Societies Registration Act. As regards the conduct of the General Body Meeting and the notices to be given as to the convening of the meeting, he submitted that if no satisfaction is recorded u/s 26 or u/s 34 or Section 36 of the Act, the entire conduct is arbitrary, hence, amenable to this Court's jurisdiction.

25. Before going into the merits of this contention, we may have to see the effect

of the Full Bench decision. In the decision reported in 1994 Writ

L.R. 779 Arivanandhapandian, K. and Anr. v. Nadar Mahajana Sangam, Etc., and 3 Ors., the Division Bench of this Court had an occasion to

consider the scope of Section 36 of the Tamilnadu Societies Registration Rules. Dispute arose therein between the parties as regards the election

to the committee. Rival groups submitted Form VII. The one filed by the writ petitioner was accepted. Later on at the instance of the other group,

the Registrar directed convening of an Extraordinary Annual General Body Meeting of the Sangam to hold an election to the committee. The

learned Judge quashed the order of the District Registrar on the question of jurisdiction. On appeal, this Court held at page 785 as follows:

Thus, on a conspectus of the provisions contained in the Act, we are of the view that the Registrar has power u/s 36 of the Act to go into the

question in the case of challenge made to Form VII and determine on holding an inquiry as per the provisions contained in Section 36 of the Act,

whether Form VII filed is correct or not. In the event he comes to the conclusion that Form No. VII is not correct and nobody has been elected, it

would be open to him to give a direction to hold a fresh election as Sub-section (9) of Section 36 clearly empowers him to give such directions as

deemed fit under the circumstances of the case. Of course, as already pointed out, such a direction would be subject to the right of the parties to

have the matter adjudicated by the Court.

26. The correctness of the aforesaid view was placed on a reference before the Full Bench of this Court. The question posed before the Full

Bench was

Whether the power of the Registrar to enquire into the affairs of a registered society u/s 36 of the Act would include the power to enquire into the

dispute relating to election to the members of the society?

This Court held that,

The power of the Registrar to enquire into the affairs of the society is only to hold a summary inquiry for his own satisfaction. The said power

cannot be construed as the power of appeal. u/s 36, the Registrar has not been empowered to adjudicate upon the conflicting claims to represent

the society based upon question of fact. A plain reading of Section 36 shows that the Registrar could look only the provisions of the Act and the

Rules and prima facie materials to arrive at a conclusion either to believe or not to believe Form No. VII in order to effect change in the register.

The power of the Registrar to call for information and explanation u/s 34 does not contemplate any power to examine witnesses or to allow

opportunity for cross examination of witnesses. The power in our view is incidental and it is only for the purpose of maintaining correct records. As

the power to conduct inquiry is only limited in order to find out whether constitution of members are valid, the inquiry is limited only for the purpose

of making entries in the register. However, the exercise of power must not be arbitrary as the orders passed or directions issued by the Registrar is

amenable to challenge in the Writ Jurisdiction.

27. A perusal of the decision of the Full Bench rendered in 2005 II LW 550 Cms. Evangelical Suvi David Memorial Higher Secondary School

Committee v. The District Registrar, Cheranmahadevi and Four Ors., shows that the power of Registrar to conduct the enquiry is only to look at

the prima facie materials to arrive at a conclusion as to whether he has to register the declaration under Form VII or not. In that process, the

Registrar cannot set at naught the election as invalid nor issue a direction for a fresh election. When the Registrar is satisfied of the particulars in

Form VII, he should enter the same in the register maintained, in cases where he is not satisfied of the contents of Form VII, he must issue a

direction to the parties to approach the Civil Court for a relief and thereafter, act as per the order of the Civil Court.

28. The decision of the Full Bench hence sets down the law that the Registrar has no adjudicatory powers as had been held so in the Division

Bench decision. Differencing from the view expressed by the Division Bench, that where Form VII is found to be not correct, it was open to the

Registrar to give a direction to hold a fresh election the Full Bench of this Court categorically stated that no such power is available with the

Registrar to cancel the election and then to give a direction to hold a fresh election. The extract of the Full Bench decision is as follows:

...A direction to hold fresh election would amount to indirectly setting aside the earlier election and such power is not conferred on the Registrar

under any of the provisions of the Act. So long as the election is not declared invalid in the manner known to law, no direction for fresh election

could be ordered....

29. Hence, the declaration as to the validity of the election has to come from a Civil Court alone for a further follow up action at the hands of the Registrar.

30. Learned Senior Counsel for the petitioner pointed out to the fact that this Court jurisdiction under Article 226 is not totally excluded where ,in

a given case, there is an arbitrary exercise of power, and hence, the writ petition is certainly maintainable in law. He also further emphasized that

the decision of the Full Bench also recognised the available of such a remedy to an aggrieved party.

In the background of the law declared, I do not find any ground to reject this submission of the Id senior Counsel for the petitioner as to the

jurisdiction of this Court to entertain a writ petition where the Registrar omits to note or ignores certain details or where he oversteps his

jurisdiction or fails to exercise the limited jurisdiction to advert to the objections set forth by any section of the members of the society, or exercises

his statutory function in perfunctory manner thus resulting in a arbitrary exercise of power. As held by the decision of this Court, the exercise of the

power cannot be an arbitrary one as the orders passed writ with arbitrary exercise are amenable to this Court under writ jurisdiction. However, on

the score of challenge thus made before this Court, it does not enable the aggrieved party to challenge the very election.

31. On the limited sphere available, invoking of this jurisdiction by the petitioners herein hence cannot be faulted with. It may further be noted that

while the power of the Registrar to check the list of members available for participation in the election does not extend to declare the election as

bad, yet, where any objection is made to the Registrar, that the electorate details are not true or complete and the Registrar ignores in the process

of registering the Form VII, one cannot discount the right of an aggrieved party to move this Court for necessary relief. It must be noted that

Section 14 empowers the Registrar to resort to Section 37 wherever a society fails to maintain the register properly. The fact that the registers are

not maintained properly does not immediately take him to declare the election as bad. If on a verification of the register, the Registrar comes to a

conclusion that the membership register is not properly maintained, and hence,

the election process had not been conducted in a fair manner, the Registrar could only record that the registers are not reliable, but leave the result of the election to be declared as bad to the Civil Court and thereafter act in accordance with the judgment of the Civil Court.

32. As pointed out by the learned senior Counsel Mr. AR.L. Sundaresan, that this Court in the decisions reported in 2005 4 LW 605 and 2005 1

LW 793 held that once the election is declared, the same has to be challenged only by way of filing an election petition, if provided for under the

Rules or by a Civil Suit, if there are no provisions in the bye laws.

33. In the background of the law declared, we may have to see the merits of the case. The learned senior Counsel for the petitioner submitted that

the prayer in the writ petition is not for setting aside the election. The fourth respondent created documents as though the meeting was held in

accordance with Rule 25. I agree with the submissions of the counsel. When the lacunae in the conduct of the election was pointed out and that the

list of members has not been properly drawn, the third respondent ought to have acted fairly to hold an enquiry as to the constitution of the

members in terms of Section 14 before he accepted Form VII. Mr. Subbiah Id Counsel for the petitioner pointed out that in spite of the objection,

no notice was given to the petitioner before acting on Form VII. The petitioner questioned the very claim of the respondent that an Extraordinary

General Body Meeting was held on 29.10.2006. In the face of the serious allegation made, even going by the Full Bench Decision, the Registrar

has the duty to hold an enquiry on a very limited sphere, that he cannot accept Form VII without any proof of the Extraordinary General Body

Meeting conducted.

34. The petitioner made a request as early as 6.9.2006 seeking fair election. The petitioner contends that as per bye law 21, only in a Annual

General Body meeting, election of office bearers can be conducted. I do not agree with this submission. As rightly submitted by the learned senior

Counsel for the respondents, I do not find any such limitation in bye law 21 or in bye law 22 that election could be a subject to fall for

consideration only in Annual General Body Meeting as per bye law 21 and not in Extraordinary Annual General Body Meeting falling under bye

law 22. In the absence of any limitation in bye law 22, I do not find any reason

to uphold the objection of the petitioners herein. The tenor of these provisions do not reveal the reservation of the subjects to be considered in the meetings to be held under Bye law 21 and under Bye law 22. As noted already, the byelaws merely stipulates the requirement for calling an extraordinary general body meeting. The silence as to the topics to be dealt with under this bye law 22 removes any doubt that one may have as to the subject matter for which the meeting could be called for under byelaw 22. In the circumstances I reject the plea of the petitioner that election of the office bearers could not be a subject matter for consideration in an extraordinary general body meeting properly summoned. I see no words of limitation in Bye law 22.

35. In any event, considering the specific allegations of the petitioners as to the conduct of the meeting in terms of Rule 25 and the total membership of the association, the Registrar is bound to consider the same before he recorded the details of Form VII. This is not to say that where the Registrar is not satisfied of the correctness of the register on membership or that the meeting was not properly held, he has the authority to the extent of cancelling the election. Where the registrar is prima facie satisfied that the meeting had been properly convened, that the declaration of membership of members registered u/s 14, participating and voting, the decision of the Full Bench mandates registering Form No. VII.

36. As already seen considering the extent of power of the Registrar, when an objection had been taken by the petitioners before the registrar as to list of members as not correct and that the meeting had not been properly convened, he should have adverted to the same given the power of supervision as to the affairs and management of the society.

37. The learned senior Counsel appearing for the petitioner made a submission that in filing of the writ petition is not challenging the election, as such, the grievance of the petitioner is only as to the manner in which the Registrar has exercised his jurisdiction in registering Form VII without considering the representation made earlier as to the list of members, who are entitled to participate in the election and the notice issued as to the conduct of the election.

38. Considering the said objection taken and representations already made to the Registrar in this regard, as an authority constituted under the Act

to supervise the functioning of the society registered, he is bound to look into these representations and record his findings thereon. In the

circumstances, while I do not find any justification to quash the order dated 29.10.2006 that the election could not be conducted in Extraordinary

General Body Meeting as per bye law 22, I find no hesitation in directing the third respondent to enquire the issues as to whether there was proper

convening of the meeting to hold the election in accordance with bye laws, the issues relating to the service of notice on the convening of the

meeting, as well as to look at the register of members entitled to participate in the election and such other objections as are taken and pass orders

thereon. If the Registrar finds in the enquiry that the register of members is not complete in terms of Section 14 or that there had not been a valid

convening of the meeting or notices issued, in terms of the decision of the Full Bench, the only course available would be to direct the parties to

settle the dispute in a manner known to law. Depending on the findings therein, the parties are at liberty to work out their rights in accordance with

law.

With the above observation, the writ petitions are disposed of. No costs.