

(1996) 09 MAD CK 0105

In the Madras High Court

Case No : Writ Petition No's. 16256 of 1991, 20328 and 20329 of 1993 and W.P. No. 12225 of 1996

A. Jothi Mahesan Secretary Devangar Kalvi Kazhagam,
Chinnalapatti, Dindigul District

APPELLANT

Vs

The Government of Tamil Nadu and The Secretary, Devangar
Educational Association (Dissolved) Chinnalapad, Dindigul
District

RESPONDENT

Date of Decision : 25-09-1996

Acts Referred:

Societies Registration Act, 1860 — Section 16(3), 4, 9

Citation : (1996) 09 MAD CK 0105

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Advocate : Padmanabhan, Mr. N. Damodaran, P. Mani, Mr. N.R. Chandran, Mr. G. Devadoss and Mr. R. Venkatakrishnan, for the Appellant; S. Manikumar, Addl. Govt. Pleader (Education) and Mr. R. Muthukumaraswamy and Mr. Suresh, Government Advocate, for the Respondent

Judgement

Kanakaraj, J.—These writ petitions illustrate that all is not well with the Devangar Community of Chinnalapatti Village at least in relation to the administration of the Educational institutions viz., Devangar Higher Secondary School and Devangar Girls Higher School. The earliest association to be registered under the Societies Registration Act, 1860 (hereinafter referred to as the Act) is the Chinnalapatti Devangar Educational Association with Register No. 20 of 1950. In the meeting held on 13-4-1985 one T.T.S. Lakshmanan was elected as Secretary of the Association. He was also nominated as the School Committee Secretary for both the Schools. On 29/5/1987 the said Lakshmanan removed eight members from the Association Committee. All of them filed O.S. No. 169 of 1987, seeking a declaration that they continue as members and they obtained interim orders on 18/9/1987 in I.A. No. 371 of 1987. The rest of the members got interim orders on 6/4/1990 by filing an appeal, C.M.A. No. 25 of 1987. On 16/11/1990 one B. Chandrasekaran was nominated as Secretary of the School Committees. He is

the petitioner in W.P. Nos. 20328 and 20329 of 1993. By proceedings, dated, 30/11/1990, the Inspector of Schools approved the nomination with a condition that the General Body should elect the new committee members for the association. According to the said Chandrasekaran, there was a General Body Meeting on 26/9/1993 and the office bearers were elected, and he was again nominated as school Secretary for three years.

2. In the meanwhile during the office of T.P.S. Lakshmanan, Statutory statements had been sent and the District Registrar ordered on 13/7/1983 that the name of the Society shall be struck off from the Register. The same was published in the Gazette, dated. 6/3/1985. One Jothi Mahesan, the petitioner in W.P. No. 16256 of 1991 claimed to be the Secretary of the Devangar Kalvi Kazhagam, a Society registered under the Tamil Nadu Societies Registration Act, 1975 with Register No. 42 of 1991, had filed a suit O.S. No. 1510 of 1991 against B. Chandrasekaran for a declaration that their society is the Educational Agency and he is the Secretary of the School committees. It is in the counter affidavit filed in E.A. No. 1166 of 1991.in O.S. No. 1510 of 1991 that it was disclosed that Chandrasekaran had obtained exemption from Rule 37 (3) of the Rules, enabling him to file an Appeal against the Orders of the District Registrar, striking off the Society 20 of 1950 from the Register to the Inspector General of Registration. The Government order was made in G.O. Rt. No. 1703, dated. 23/8/1991. The Appeal of Chandrasekaran, dated. 14/6/ 1991 is pending with the Inspector General. Jothi Mahesan has challenged the validity of the said G.O. Rt. No. 1703 in W.P. No. 16256 of 1991.

3. By an order, dated. 4/10/1993, the Director of School Education held that Chandrasekaran had not complied with the conditions of approval, dated 29/11/1990 and the Society 20 of 1950 had been dissolved. So, the Director directed that until the society is registered, the G.O. Ms. No. 881 (Education) dated. 4/6/1979 was being invoked and the District Educational Officer and Inspector of Schools (Girls) were directed to administer the two schools. By consequential orders, dated 8/10/ 1993 and 11/10/1993 the salary of the teaching and non-teaching staff were directed to be paid through the Headmaster and Headmistress respectively. These orders were challenged by Chandrasekaran in W.P. No. 19263 of 1993. In W.M.P. No. 30000 of 1993 interim orders of stay were obtained. W.P. No. 20328 and 20329 of 1993 are for a writ of Mandamus to recognise Chandrasekaran as Secretary for the two schools. Therefore W.P. No. 19263 of 93 was withdrawn and dismissed.

4. One S.T. Subramaniam, claiming to be the President of the Devangar Kalvi Kazhagam seeks a writ of Mandamus in W.P. No. 12225 of 1996 to direct the respondents 1 to 3 to take steps under Sections 18-A and 53 A of the Tamil Nadu Recognised Private Schools (Regulation) Act hereinafter referred to as the Schools Act.

5. Let us now see the stand taken by the respondents. The District Educational Officer in his written instructions first refers to the registration of Devangar

Education Association as Society bearing No. 20 of 1950. Reference is made to LA. No. 371 of 1987 in O.S. No. 169 of 1987, the Appeal C.M.A. No. 25 of 1987 and CRP. No. 1300 of 1990 and the approval of Chandrasekaran as Secretary on 26/11/1990 subject to the two conditions. In spite of the repeated requests, the conditions were not complied with, Reference is made to the striking out the name of the Society 20 of 1950 and publication in the Gazette on 6/3/1985. It is therefore pointed out that orders were rightly passed on 4/10/1993, placing the administration in the hands of the Educational Authorities. It is also pointed out that the last General Body Meeting of the Society was held on 13/4/1985. Rule 13 of the Tamil Nadu Recognised Private Schools Regulation Rules, 1974 requires the conduct of a meeting within three years. The request of Chandrasekaran to approve the new office bearers, as per letter, dated. 2/10/1993 was not complied with because the society had become defunct and no meeting had been conducted within the prescribed period. It is admitted that the Appeal of Chandrasekaran dated. 14/6/1991 against the dissolution of the society is pending, it is next pointed out that Jothi Mahesan has formed the Devangar Educational Association with Registration No. 42 of 1991. One S.M. Durai has registered Devangar Educational Development Association with Registration No. 172 of 1993. It is pointed out that there were too many rival claims regarding the educational agency and therefore the orders, dated. 4/10/1993, 8/10/1993 and 11/10/1993 are perfectly in order.

6. The Joint Secretary to the Government has filed a counter affidavit in W.P. No. 16256 of 1991, supporting the G.O. No. 1703 dated 23/8/1991. He also says that the Appeal is still pending with the Inspector General of Registration.

7. Mr. S.M. Dorai, who has impleaded himself in W.P. Nos. 20328 and 20329 of 1993 has filed a counter affidavit setting out the following details. He points out that the disputes had arisen in the year 1985 regarding the constitution of the Education Agency as well as the school committees. He alleges that Chandrasekaran was indulging in irregularities and violating the provisions of the Schools Act and the Rules. Therefore, rightly orders were passed on 4/10/1993 entrusting the management to the School Authorities. He had also been impleaded in W.P. No. 19265 of 1993 and on his complaint the stay granted in W.M.P. No. 30000 of 1993 was vacated. The writ petition No. 19265 of 1993 itself was withdrawn and dismissed by order dated 4/1/1994 made by this Court.

8. The Tamil Nadu Societies Registration Act, 1975, which is the successor of the Societies Registration Act, 1860, is probably the most loosely administered enactment. The officers charged with the enforcement of the Act get activated when they are specially interested by themselves or through others. One need not go far to illustrate the point. In this very case, in respect of the very same schools started by the Devangar Community of Chinnalapatti village, there are as many as three registered Societies one under the parent Act viz. the society with Registration No. 20 of 1950 and under the present Act, viz., 42 of 1991 (Jothi Mahesan) and 172 of 1993 (S.M. Dorai), all of them with identical or deceptively

similar names. I only take pity on the School Authorities, who are charged with the duty of recognising the true and genuine School Agency, the Correspondent and the Secretary of the School. Section 9 of the Act places a restriction on the name of the Society. If only the Authorities had remembered the provisions of Sections 6 to 10 of the Act, there could not have been three Societies in the Devangar Community of Chinnalapatti Village.

9. The complaint of the petitioner in W.P. No. 16256 of 1991 also goes to show that the said Act is not being implemented for the real objects and purposes for which the enactment was made. The present Act 27 of 1975 came into force on 22/4/1978 and contains significant changes over the Central Act 18 of 1960. There are more than 6000 Societies in the State of Tamil Nadu and the purpose of the Act was to regulate and conduct the registered Societies on healthy lines. In W.P. No. 16256 of 1991, the Government Order challenged by the petitioner is O.O. Rt. No. 1703, dated 25/8/1981. A perusal of the said order shows that the Government has exercised the powers conferred under clause 1 of Section 54 and exempted the Devangar Educational Society Registration No. 20 of 1950, Chinnalapatti from the provisions of sub rule (3) of Rule 37 of the Tamil Nadu Societies Registration Rules 1978, so as to condone the delay In making an Appeal to the Inspector General of Registration, seeking restoration of the Society under sub Clause (b) of Sub Section 4 of Section 44 of the Act. We have already noticed that the said society with Registration No. 20 of 1950 had failed to file the statutory returns, as prescribed in Section 16(3) of the Act. Therefore, notices were issued u/s 44(3) of the Act seeking an explanation from the office bearers. Notices were also published in the Government Gazette that if no cause was shown the name of the Society will automatically be struck off from the Register. Since there was no response from the society further notification was issued and published in the Gazette, dated. 6/3/1985, declaring the society as having been dissolved. Sub Section 5 of Section 44 of the Act enables the Society or any member or even a creditor to file an appeal to the Inspector General of Registration. Rule 37 of the Rules prescribes the time limit within which such an appeal should be filed. Sub Clause 3 of Rule 37 prescribes a period of one year. It has to be remembered mat even against the appellate order, the aggrieved person can approach the Court for relief. There is one other important sub clause viz., sub clause (8) of Section 44 inserted by Tamil Nadu 16 of 1994. It is worthwhile to quote the sub clause (8) which runs as follows:-

"(8) If the name of the registered society having been struck off the register, has not been restored or if the period allowed for appeal has lapsed or no appeal has been made oral appeal has been made but dismissed under this Act, the registered society shall not function and the provisions of Section 39 shall apply as if the registration of such society has been cancelled.""

Section 39 of the Act says that such a Society shall forthwith cease to carry on its business except so far as may be required for the beneficial winding up thereof.

10. In this case, the official notification came to be passed as early as on 6/3/1985. Actually, the Society is deemed to have been dissolved, after the expiry of three months from 13/7/1983, when the notification was issued u/s 44 (3) of the Act. Even so, the Society or any other office bearers did not choose to file an appeal against the said notification cancelling the registration of the Society. As late as on 14/6/1991, the said Chandrasekaran claims to have filed the appeal on the ground that he came to know the gazette notification only in June, 1991. In other words, after giving credit to the one year period of limitation from 6/3/1985 to 5/3/1986, there was a delay of nearly five years in preferring the Appeal. It is not clear as to how Chandrasekaran moved the Government seeking exemption from the period of limitation prescribed under Rule 37(3). There is no reference to any notice having been issued on the application of Chandrasekaran, seeking exemption of the period of limitation. All the same, the impugned order has been passed on 25/8/1991.

11. Mr. E. Padmanabhan, learned counsel for the petitioners attacks the order on several grounds: The power of exemption is contained In Section 54 of the Act. Such powers of exemption have to be construed with care and caution as otherwise they are liable to be attacked on the ground of arbitrariness. Such powers of exemption have always been upheld by the Courts of law only in the hope that the Government Authorities will act within the four corners of law by applying the elementary principles of natural justice. The order of exemption must at least disclose the reasons for granting the exemption and the hardship, if any suffered by the aggrieved person. Unless such reasons are given, the Court has to conclude that the Government had not applied its mind before the grant of the exemption. A Division Bench of this Court in Palant Hills Conservation Council etc., v. The State of Tamil Nadu etc., and others (1995 2 Writ LR 737), while considering the similar power of exemption considering a Catema of cases and held that for the exercise of the statutory power, there should be present grounds mentioned in the statutes and such grounds should be made out on the basis of the relevant materials. It was open to challenge by a person that the satisfaction of the authority was wholly based on irrelevant grounds and amounted to no satisfaction at all. Observed the Division Bench as follows:

"Bearing the above principles in mind, if the validity of G.O. Ms. No. 126, dated. 13/5/1994 is tested, there can be no doubt whatever that it does not satisfy any of the tests prescribed in the above rulings. On the other hand, it is vitiated by considerations which are not relevant of Germane, to the objects of the legislation viz., Chapter XA of the District Municipalities Act."

12. In this case, it is pointed out that no reasons are given and the grant of exemption is not for the purpose of achieving the objects of the Act and is therefore arbitrary. In this case, the Government should have taken note of the fact that the Society in question was administering two schools and if it had ceased its Operation from 13/7/1983 onwards, was it in public interest to restore such a society ignoring the interests of the staff and students of the schools.

What is more, I have already pointed out that by this time two other societies had come into being viz., the Society with registration No. 42 of 1991 and the Society with Registration No. 172 of 1993. The Government should have taken notice of the implications of granting such an exemption and as to how it will unsettle the established administration of the schools.

13. Learned Counsel for the respondents in W.P. No. 16256 of 1991 has brought to my notice the Judgment reported in The Registrar of Co-operative Societies, Trivandrum and Another Vs. K. Kunjabmu and Others, In my opinion, that Judgment itself gives a clue to the manner of interpreting an exemption clause. In that case, the Apex Court upheld the validity of Section 60 of the Madras Co-operative Societies Act giving the power of exemption to the Government. The following point illustrates my point

"The power given to the Government u/s 60 of the Act is to be exercised so as to advance the policy and objects of the Act, according to the guidelines, as may be gleaned from the preamble and other provisions which we have already pointed out, are clear...."

On a careful consideration of the entire facts of the case and the history of the two schools administered by the Devangar Community in Chinnalapatti town, I am of the clear opinion that the grant of exemption after nearly five years cannot be upheld as a proper exercise of power. Further, it is to be remembered that even now the said appeal filed by the said Chandrasekaran on 14/6/1991 is pending disposal on the file of the Inspector General of legislation. It would be in the interest of the. Schools to give life to the said Appeal, after the lapse of nearly twelve years after the Society was declared to be defunct and in this view if the matter the order of the Government in G.O. Rt. No. 1703 (Commercial Taxed and Religious Endowments Department), dated. 25/1991 is quashed. Writ petition No. 16256 of 1991 is allowed.

14. Having regard to the decision rendered W.P. No. 16256 of 1991, the society bearing Legislation No. 20 of 1950 and the office bears of the society including Mr. Chandrasekaran have no right at all to maintain any writ petition in relation to the said schools. Mr. N.R. Chandran, learned Senior Counsel attempted an argument that even if a Society is not registered, the Secretary can function as an Educational Agency under the Schools Act. I do not accept his contention because this is a case, where the agency claims to be a registered society and it was only on that basis they sought to appoint the Secretary and Correspondent of the school. Having made such a claim, once the Society is dissolved or cancelled, Section 39 of the Act will come into play and the Registered Society shall cease to carry on its business. In this view of the matter W.P. Nos. 20328 and 20329 of 1993 have no legs to stand upon and they are accordingly dismissed. The last writ petition, which remains to be considered is W.P. No. 12225 of 1996, wherein the prayer is to direct the respondents 1 to 3 to take steps u/s 18A and 53(A) (2) of the Schools Act. In my opinion, no relief need be given in this writ petition because the order which now holds the field is order,

dated 4/10/1993 made by the Director of Schools Education and in that order, both the Schools have been directed to be under the management of the District Educational Officer and the Inspector of Schools (Girls) respectively. This order is practically an order u/s 53(A) (2) of the Schools Act. In this connection, a reference to a Division Bench Judgment of this Court in L.R. Karuppiah Pillai, and Others v. The District Revenue Officer, Tenkasi and 5 others (1994 Writ L.R. 313) will also be useful. The Division Bench of this Court has given the necessary guidelines for invoking Section 53 (A) (2) of the Schools Act. Therefore, if any addition to the said order, dated. 4/10/1993 is to be made or it is necessary to pass a fresh order, the Authorities can do so by specifically referring to Section 53 (A) (2) of the Schools Act and in doing so they shall indicate that the management will rest with the school Authorities until any of the Associations are able to get a clear decree from a Civil Court that they are the genuine Educational Agency entitled to control the two schools. In such an event notices must be given to all the parties. Writ petition No. 12225 of 1996 is ordered on the above terms. There will be no order as to costs.