

(2005) 03 MAD CK 0042

In the Madras High Court

Case No : Writ Appeal No's. 2969 of 2001, 331 of 2002, 170 and 217 of 2004

C.M.S. Evangelical Suvi David Memorial Higher Secondary
School Committee Karisal

APPELLANT

Vs

The District Registrar and Others
J. David Vs The
District Registrar, Registration Department and Jebamani

Gandhipuram Sarvodaya Sangam Vs The District
Registrar and K. Balathandapani
Gandhipuram
Sarvodaya Sangam Vs The District Registrar and K.
Balathandapani
The District Registrar Vs K.
Balathandapani and Gandhipuram Sarvodaya Sangam

RESPONDENT

Date of Decision : 24-03-2005

Acts Referred:

Constitution of India, 1950 — Article 372

Tamil Nadu Societies Registration Act, 1975 — Section 10(1), 10(2), 11, 15, 15(2)

Tamil Nadu Societies Registration Rules, 1978 — Rule 15, 16, 17, 17(1), 17(2)

Citation : (2005) 2 CTC 161 : (2005) 2 LW 550 : (2005) 2 MLJ 335

Hon'ble Judges : S.R. Singharavelu, J;P. Sathasivam, J;D. Murugesan, J

Bench : Full Bench

Advocate : R. Thiyagarajan for P. Peppin Fernando, in WA 2969/2001, N. Paul Vasanthakumar, in WA 331/2002 and T.R. Rajagopalan for Aiyar and Dolia, in W.A. 170 and 217/2004, for the Appellant; N.R. Chandran, General assisted by V. Raghupathy, Govt. Pleader for Respondent Nos. 1, 4 and 5 in WA 2969/2001, R1 in WA 170/2004 and R2 in WA 217/2004, C. Selvaraju for T. Sellapandian, in WA 2969/2001 and 331/2002 and K. Chandru for G. Thilagavathy, in WA 217/2004 and Respondent No. 2 in W.A. No. 170/2004, for the Respondent

Judgement

D. Murugesan, J.

1. This reference arises in the following circumstances.

2. A Division Bench in the judgment reported in K. ARIVANANTHAPANDIAN AND ANR. v. NADAR MAHAJANA SANGAM ETC.

AND THREE ORS. 1994 WLR 779 has held that the Registrar alone can register a

society and it is before whom Form VII is submitted and any change in the membership or in the Committee should also be reported to him as per Section 15(2) read with Rule 17 in Form VII, it is necessary for the Registrar to be sure of the persons who are elected to the committee of each and every society which comes under his jurisdiction. The Division Bench has also held that wherever Form VII is filed and the correctness of it is challenged by one or other party being the members of the society/Sangam, he can enquire and find out as to whether who are elected to the Committee. On such enquiry, if the Registrar comes to the conclusion that Form VII filed is not correct and nobody has been elected, it will be open to him to give a direction to hold a fresh election, as Sub-section (9) of Section 36 empowers him to give such direction under the circumstances of the case. The Division Bench has also held that such direction would be subject to the right of the parties to have the matter adjudicated by Court.

3. The correctness of the said judgment was questioned in W.A. Nos. 2157,2191 and 2192/2002 and the Division Bench on 19.8.2002 referred

the issue to full Bench for adjudication and the order of the Division Bench reads thus:

In support of the direction issued by the learned single Judge regarding availment of the appeal remedy, the learned counsel of the Madras High

Court reported in K.ARIVANANTHAPANDIAN AND ANR. v. NADAR MAHAJANA SANGAM ETC. AND THREE ORS. 1994 WLR

779 Mr.R. Krishnamurthi, the learned senior counsel appearing for the elected managing Committee submitted that the said Division Bench

Judgment needs reconsideration for the reason that Section 36 of the Tamil Nadu Societies Registration Act, 1975 (hereinafter referred to as "the

Act" for short) does not envisage any appeal provision to meet the situation like this, where there is a dispute with regard to the election of the

managing committee. We some force in his contention as prima facie, we are unable to locate any power of adjudication of any dispute regarding

validity of the election of the managing committee, and the appeal provision contained u/s 45 of the Act is attracted only when there is such power

of enquiry u/s 36 of the Act. In view of this, we refer these matters to full Bench for adjudication. Pending further orders, the order of the learned

single Judge dated 3.7.2002 keeping the order of the District Registrar(Administration), Madurai South, Madurai dated 24.6.2002 in abeyance, is

suspended

4. In view of the above, the following question arises for our consideration. 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?

5. The earliest enactment on the field is the Societies Registration Act, 1860. After the advent of the Constitution, the powers to legislate by the

Centre and the State were demarcated in 7th Schedule of the Constitution of India. List II relates to the power of the State Legislature to make

legislation. Entry 32 relates to the power of the State Legislature to enact law including the regulation of Cooperative Societies. The said Entry

reads thus:

Incorporation, regulation and winding up of Corporation, other than those specified in List I, and universities, unincorporated trading, literacy,

scientific, religious and other societies and associations, cooperative societies

6. However, the Central Act of 1860 (Act 21/1860) also continued to be in force by virtue of Article 372 of the Constitution, which provided for

continuance in force of existing laws and adaptations. Though the Act 21/1860 was enacted with the object of Registration of Literacy, Scientific

and Charitable Societies, the Registration of the Society was not made compulsory, hence the working of the provisions of the Act, brought to light

many defects. Therefore, the Tamil Nadu Government enacted the Tamil Nadu Societies Registration Act, 1975, keeping in mind the absence of

the provisions in the Central Act for change the name of the society, the maintenance of register of Members and Committee Members, the

keeping of a registered office, the alteration of bye-laws, the holding of Annual General Meetings and the winding up of the society under the

orders of the Registrar and to regulate the same. The preamble states that the Act is to provide for the registration of literacy, scientific, religious,

charitable and other societies in the State of Tamil Nadu, thereby making the said enactment not only restricting the application of the Act only to

the registration of literacy, scientific and charitable societies to include all other

societies.

7. Chapter II of the Act deals with Constitution and Registration of society.

In terms of Section 3 of the Act, any society which has for its object the promotion of education, literature, science, religion, charity, social reform,

art, crafts, cottage industries, athletics, cultural activities, the diffusion of useful knowledge or such other useful object may be registered under the

Act. In terms of Section 4 of the Act, every society formed on or after the date of the commencement of this Act, which has for its object any of

the object mentioned in, or prescribed u/s 3, which consists of not less than twenty members or whose annual gross income or expenditure in any

financial year after the date of the commencement of this Act is not less than ten thousand rupees, shall be registered and the Registration is made

compulsory. The Act also states that in respect of the society which has for its object, the promotion of religion, athletics or sports or any other

object mentioned in or prescribed u/s 4 to which the provisions of society Section 4 is not applicable. u/s 5, even those societies which do not fall

u/s 4, may opt for registration, as there is no prohibition for registration. The object of Registration is to recognise the registered societies as legal

entity.

8. In terms of Section 6, for the purpose of Registration, the memorandum, bye-laws and the details of name of the society, the objects of the

society and the names, addresses and occupations of the members of the Committee should be filed with the Registrar of the District in which the

society is formed. The Registrar on being satisfied that the society has complied with the provisions of the Act and the Rules made thereunder as to

the registration shall issue to that society a certificate of registration under Sub-section(1) of Section 10. The Registrar shall after the issue of a

certificate of registration to a society, enter in a register prescribed for the purpose of such particulars as may be prescribed under Sub-section(2)

of Section 10. Section 11 contemplates the change of name of registered society. Any registered society, may by special resolution and with the

approval in writing of the Registrar, change its name.

9. Chapter III deals with Management and Administration:

In terms of Section 15, every registered society shall have a committee of not less than three members to manage its affairs and every registered

society shall file with the Registrar a copy of the register maintained by it from time to time filed with the Registrar a notice of any change among the members of the committee. As per Sub-section(3) of Section 15, the members of the committee shall be appointed at a meeting of the society by a resolution of a majority of the members present and entitled to vote thereat. In terms of Section 16, every registered society shall keep proper books of accounts for the purpose of accounts audit. Both movable and immovable properties belonging to the registered society, whether acquired before or after its registration, if not vested in trustees, shall vest in the committee in terms of Section 18. In terms of Section 26, at least one general meeting of the registered society shall be held in every financial year and the notice of every such general meeting shall be given by the registered society to its members within such period as may be prescribed before the day appointed for the meeting and the notice shall specify the day, hour and place and the object of the meeting and in case any amendment of a bye-law or objects of association as contained in the memorandum is intended to be proposed, shall contain a copy of every such amendment. In terms of Section 27, a copy of every special resolution for any purpose, signed by an officer of the registered society shall be filed with the Registrar. In terms of Section 30, any two or more registered societies may with the prior approval of the Registrar, by special resolution result in amalgamation. Section 34 empowers the Registrar to call for information or explanation with respect to any document , the registered society is required to file with him.

10. Section 34-A was inserted by the Tamil Nadu Act 16 of 1994 empowering the State Government to supersede a committee. The power of supersession however is not conferred on the Registrar. As the Act requires compulsory registration of a specified Society under certain conditions and registration of a society is enumerated in Chapter II. Likewise, the Management and Administration of such registered society are contemplated in Chapter III.

11. Chapter IV relates to Inspection, Inquiry, Cancellation, Winding up and appeal of a society. Section 36 relates to the power of the Registrar to inquire into the affairs of the registered society and the said Section reads thus:

36. Power of the Registrar to enquire into the affairs of registered society:

(1) The Registrar may, of his own motion or on the application of a majority of the members of the committee of a registered society or on the application of not less than one third of the members of that registered society, or if so moved by the District Collector hold or direct some person authorised by the Registrar by order in writing in this behalf to hold, an enquiry, into the constitution working and financial condition of that registered society.

(2) An application to the Registrar under sub- section(2) shall be supported by such evidence as the Registrar may require for the purpose of showing that the applicants have good reason for applying for an inquiry.

(3) The Registrar may require the applicants under sub-section (1) to furnish such security as he thinks fit for the costs of the proposed inquiry, before the inquiry is held.

(4) All expenses of, and incidental or preliminary to, the inquiry shall, where such inquiry is held:

(a) on application, be defrayed by the applicants therefore or out of the assets of the registered society or by the members or officers of the registered society, in such proportions as the Registrar may, by order in writing, direct, and

(b) on the District Collector's or Registrars motion, be defrayed out of the assets of the registered society, and shall be recoverable as an arrear of land revenue

(5) An order made under sub-section(4) shall on application, be enforced by any civil Court having local jurisdiction in the same manner as a decree of such Court

(6) A person holding an inquiry under this Section shall at all reasonable times have free access to all the books, accounts and documents of the registered society, and shall have the power to call upon, the registered society and the officers of society to produce such books, accounts and documents and furnish statements and other information in relation to its business as he may direct.

(7) It shall be the duty of all persons who are or have been officers of the registered society to furnish the inquiring officer with all the books, accounts and documents in their custody or power relating to the registered society.

(8) A person holding an inquiry under this Section may summon any person, who he has reason to believe, has knowledge of any of the affairs of

the registered society and may examine such person on oath and may summon any person to produce any books, accounts or documents

belonging to him or in his custody if the person holding the inquiry has reason to believe that such books, accounts or documents contain any

entries relating to transactions of the registered society.

(9) The result of the inquiry shall be communicated to the registered society and to the applicants, if any, and if the Registrar is satisfied that the

result of the inquiry does not warrant action u/s 37, he may issue such direction to the registered society, or any member of the registered society,

as the Registrar may deem fit

12. Rule 15 contemplates that the notice of the situation of a registered society and of any change thereof shall be in form V and the same shall be

filed with the Registrar within three months from the date of registration of the society or after the date of change as the date may be. Rule 16

contemplates that the registered society register the members of specified in Sub-section (1) of Section 14 shall be in Form VI. Section 14(1)

contemplates that every registered society shall maintain a register containing the names, addresses and occupations of its members. By virtue of

the above Rules, Form V and Form VII are to be maintained by the registered society itself.

13. In terms of sub-rule(1) of Rule 17, the registered society shall file with the Registrar within one month from the date of registration of the

society, a copy of the register of members maintained by the society. In case any change among the members of the society or the committee in

terms of Sub-rule (2) of Rule 17, notice of such change shall be filed in Form No. VII within three months from the date of such change to the

Registrar. The said notice of change shall be accompanied by the resolution of the meeting effecting such change.

14. Form VII contains the name of the society, date of registration, the year of registration and the details of change. Filing of the said Form is in

order to ensure that such change in the committee or the members is entered in the register maintained in the office of the Registrar as maintenance

of such record is compulsory.

15. For the purpose of such registration when Form No.VII is filed, the Registrar shall necessarily satisfy himself as to whether the particulars

furnished in Form No.VII are true and correct.

16. Under Sub-section(1) of Section 36, the Registrar may of his own motion or on the application of a majority of the members of the Committee

of a registered society or on the application of not less than one third of the members of that registered society or if so moved by the District

Collector hold or direct some person authorised by the Registrar by order in writing in this behalf to hold, an inquiry into the constitution, working

and financial condition of that registered society. It is argued that in view of the word"" into the constitution"" employed in Section 36, the power of

the Registrar to inquire into the affairs of the society shall include the power to inquire into the election of members. It is further argued that in terms

of Sub-Section (9) of Section 36 of the Act, the power of the Registrar to enquire into the affairs of the society shall also include such direction to

hold fresh election as well.

17. A conspicuous reading of the above mentioned provisions show that the Act is intended to regulate the affairs of the society in accordance with

the provisions contained therein and the rules made thereunder and that the registration is made compulsory on certain contingency and for its

enforcement the provisions confer only the administrative power of the Registrar to ensure that the registered society to function strictly in

accordance with the provisions of the Act or the Rules made thereunder, more particularly for maintenance of accounts for audit purpose; framing

of bye-laws in conformity with the object of the society for which it is formed and registered; in respect of application of funds of the registered

society, conduct of annual General Meetings and extraordinary general meeting and amalgamation and division of registered societies. The

Registrar has power to direct the registered society to furnish in writing such information or explanation in respect of any document which the

registered society is required to file with him.

18. 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.

19. In this context it could also be kept in mind the intention of the Legislature not to confer a power of supersession of the Committee on the

Registrar as by insertion of Tamil Nadu Act 16 of 1994, such power is vested only in the Government and even when the Registrar is satisfied after

enquiry u/s 36 that the society which has contravened any of the provisions of the Act or the Rules made thereunder or the society is insolvent or

must necessarily become so or that the business of any such registered society is conducted fraudulently or not in accordance with the bye-laws or

the objects specified in the memorandum filed with the Registrar, he may only cancel the registration.

20. As the power of the Registrar to hold enquiry is only to arrive at a prima facie conclusion as to the correctness of the particulars given in Form

VII, the provision of Sub-Section (9) of Section 36 should also be understood to mean that he could issue such directions to the registered society

or any of the member of the society only with reference to the details furnished in Form VII. It must also be borne in mind that the enquiry u/s 36 is

not only limited to the regular affairs of the society and such affairs not only include the constitution of a registered society but also to the working

and financial condition, and hence the power of the Registrar to issue such direction under Sub-section (9) of Section 36 of the Act, in regard to

the constitution of the registered society must be understood in the context of Form VII. Section 14 obligates the registered society to maintain a

register containing the names, addresses and occupations of its members. Section 15 further mandates such registered society shall file with the Registrar a copy of the register maintained by it u/s 14 and from time to time file with the Registrar notice of any change among the members of the committee. In the absence of failure to comply with Section 14, the Registrar could only resort to the power u/s 37 to cancel the registration.

Hence, the power under Sub-Section (9) of Section 36 cannot be stretched to a power on the Registrar to direct the registered society to hold fresh election. 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. Validity of the election could very well be decided only by the competent Civil Court as the parties are entitled to let in their evidence to sustain their respective claims. In the event the Registrar satisfies himself as to the particulars furnished in Form VII as correct, he should enter the names in the register maintained for that purpose. In the event if he does not satisfy as to the particulars and thereby does not accept Form VII, he has to issue a direction relegating the parties to approach the civil Court for appropriate orders and thereafter shall act as per the orders of the civil Court. Accordingly, the issue is answered. Post the Writ Appeals for disposal accordingly.