

(1994) 07 MAD CK 0119

In the Madras High Court

Case No : W.A. No's. 870 to 872 of 1994

K. Arivananthapandian and another

APPELLANT

Vs

Nadar Mahajana Sangam and 3 others

RESPONDENT

Date of Decision : 20-07-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Constitution of India, 1950 — Article 226

Registration Act, 1908 — Section 15, 15(2), 15(3), 15(3), 2(i)

Citation : (1994) 07 MAD CK 0119

Hon'ble Judges : K.A. Swami, C.J.;Somasundaram, J

Bench : Division Bench

Advocate : R. Gandhi, for A.P. Chandirasekaran and P. Selvaraj, for the Appellant; K. Alagiriswami, Mr. A.S. Venkatachalamoorihy, Government pleader and Mr. K. Vijayakumar, for the Respondent

Judgement

K.A. Swami, C.J.—These writ appeals are preferred against the common order dated 11.7.1994 passed by the learned single Judge in writ petitions 8056, 8909 and 9342 of 1994 respectively. Respondents 3 and 4 in all the writ petitions are the appellants in these appeals. The 1st respondent in each one of these appeals is the petitioner in the writ petitions. The petitioner sought for various reliefs in the writ petitions as referred to by the learned single Judge. We do not consider it necessary to refer to them once again in this judgment, the question that arose before the learned single Judge was as to whether the District Registrar (Administration) (Societies), Madurai, had jurisdiction under the provisions of the Tamil Nadu Societies Registration Act, 1975 (hereinafter referred to as the Act) to pass orders dated 22/4/1994 and 11/5/1994. On examining the provisions contained in Ss. 28 and 36 of the Act, learned single Judge has come to a conclusion that the District Registrar does not enjoy any such power, therefore the orders passed by him are without jurisdiction. Accordingly, the writ petitions have been allowed and the impugned orders have been quashed. Hence, respondents 3 and 4 in each of the writ petitions who claim to have been elected

to the Committee of the 1st respondent Sangam in an annual general body meeting held on 19.12.1993, have come up in appeals.

2. Before advertng to the contentions urged on both sides and examining the validity, the facts necessary for deciding those contentions are as follows:- There is a Sangam known as Nadar Mahajana Sangam (1st respondent) (hereinafter referred to as the Sangam) registered under the Act. It is running a College known as S. Vellaichamy Nadar College at Madurai. It is a famous college. There is a dispute between the parties regarding the election to the Committee. The Sangam is governed by the provisions of the Act and the Rules framed thereunder. According to the case of the petitioner in the writ petitions, it is not the appellants and others of their group who were elected to the Committee in the annual general body meeting of the Sangam held on 19.12.1993, but it were Dhanasekarapandian, V.V.S. Yogan, S.V.S. Sundaramoorthy and A.M. Selvaraj and 40 members who were elected to the committee as President, Vice-President, Secretary and Treasurer respectively and 40 as Members of the Committee.

3. On the contrary, it is the case of respondents 3 and 4 in the writ petitions who are the appellants in these appeals that it was Arivanandapandian and D. Thangaraj who were elected as President and Secretary-cum-Correspondent and 40 others as Members. There was Form VII submitted by both groups, as required by S. 15(3) of the Act, read with sub-rule (2) of Rule 17 of the Tamil Nadu Societies Registration Rules, 1978 (hereinafter referred to as the Rules). The case of the writ petitioner is that Form VII submitted by it was accepted by the District Registrar and the elected members were functioning as members of the Committee of the Sangam, that it was later on at the instance of the other group, the District Registrar issued a notice dated 15.4.1994 directing them to appear on 22.4.1994 for an inquiry to be conducted under S. 36 of the Act; that on 19.4.1994 itself they sent a letter requesting, time till 26.7.1994, whereas the District Registrar had straightaway passed the order on 22.4.1994 without considering the request of Dhanasekarapandian and others of his group for time. On the contrary, it is the case of respondents 3 and 4 in the writ petition and also the District Registrar that the letters dated 19.4.1994 sent by them were not received on or before 22.4.1994, whereas the same were received on 29.4.1994, therefore, the District Registrar could not postpone the inquiry and had no other option but to pass the order, because several members of the Sangam gave a written representation that fresh election should be ordered. By the impugned order, the District Registrar directed for convening an extra-ordinary annual general body meeting of the Sangam to hold an election to the Committee. Learned single Judge, as already pointed out, has quashed the order on the ground that the District Registrar does not enjoy any such power under the provisions of the Act.

4. In view of the factual contentions urged as to the receipt of the letters dated 19.4.1994 on or before 22.4.1994, we directed the learned Government Pleader

to secure the records of the District Registrar including the inward register. Accordingly, learned Government Pleader has obtained all the records and placed them before us.

4-A. The case of the petitioner in the writ petitions is that one of the letters was sent by registered post and the other two were sent under certificate of posting. From the inward register maintained for making entries of the registered letters received by District Registrar's office, it is noticed that no entry is made from 29.3.1994 till 6.6.1994, but the registered letter has been received by the District Registrar's office and according to it, it has been received only on 29.4.1994. Similarly, in the other inward register where the tapals received by ordinary post are entered, entries at serial numbers 4851 and 4852 are relied upon as pertaining to the letters sent under certificate of posting. It may be relevant to notice that there is nothing written as against the serial numbers 4851 and 4852. In fact, as per the Office "Manual, "Hand Book on Office Administration", 6th Edition, dated 31st December, 1986, a main distribution register should be maintained for the office as a whole, which shall contain the following three columns:

Serial number of papers

Enclosures if any

Section to which allotted and acknowledgment of Section head.

(1)

(2)

(3)

There are no particulars entered in the register as against serial numbers 4851 and 4852. We also perused several other entries in the inward register. In our opinion, it is less said better. All does not appear to be well with the officer of the all District Registrar. It is not the case of the District Registrar that no registered letter was received between 29.3.1994 and 7.6.1994, as admittedly one of the letters relied upon in the case was received on 29.4.1994 according to the case of the District Registrar, but no entry is found. Therefore, these two registers do not inspire confidence, hence the same cannot at all be relied upon and they are rejected. Consequently, it follows that there is no proof of the fact that the letters sent by the writ petitioner did not reach in time, it is not possible to think that local delivery of letters sent by post would take ten days to reach. In the normal course, the same would have been delivered either on the next day or a day thereafter. In any case, it should have been delivered on or before 22.4.1994. It is for the superior officer to the District Registrar/to look into these matters and set right inasmuch as Public Office and public Officers should be an example to all others and should maintain clear records. They owe a duty to public to maintain these records in a manner required by the rules prescribed for the purpose of better administration. We would have directed an action to be taken

against the District Registrar but we are told the District Registrar who was in office in April 1994 has retired.

5. In the light of the contentions urged by both sides, the following points arise for consideration:

(i) Whether under S. 36 of the Act the District Registrar has power to inquire into the matter as to who are the elected President, Vice-President and Members of the Committee of the Sangam registered under the Act and if so, what is the extent of his power?

(ii) If answer to point (i) is in the affirmative, whether the impugned orders passed by the District Registrar are in accordance with law? Point (i)

6. The Act has been passed with an object to provide for the registration of literary, scientific, religious charitable and other societies in the State of Tamil Nadu. Therefore, the very scope and object of the Act are limited, as is stated in the preamble of the Act. It consists of VII Chapters and 58 Sections. First Chapter deals with preliminary matters, Second Chapter deals with constitution and registration, Third Chapter deals with management and administration, Fourth Chapter deals with inspection, inquiry, cancellation, winding up and appeal, Fifth Chapter deals with offence and procedure. Sixth Chapter deals with fees and supervision and Seventh Chapter deals with miscellaneous matters. The Preliminary chapter contains key Section, viz., the definition Section defining certain expressions used in the Act. The word "Committee" has been defined as meaning the governing body of a registered society to whom the management of its affairs is entrusted. The word "Court" means in the Presidency Town, the Madras City Civil Court and elsewhere the District Court. The expression "Registrar" is defined.

According to the definition, "Registrar" means the Inspector- General of Registration appointed under sub-Section (1) of S. 3 of the Registration Act, 1908 (Central Act XVI of 1908), or the Registrar of a district appointed under No. 4 that Act, or any person authorized by the Government to exercise all or any of the powers of the Registrar under this Act."

Thus the Registrar of the District is also the Registrar and he can exercise all the powers under the Act which the Registrar can unless he is specifically directed otherwise. There are other definitions which are not relevant for our purpose As already pointed out. Chapter II deals with constitution and registration, which include the procedure for registration, filing of memorandum of bye-laws and amendment of the bye laws etc. The Third Chapter which is the longest of all the chapters in the Act, contains several provision such as registered office of the society, register of the members to be maintained, election of the committee, accounts and audit, supply of copies of bye-laws, property of registered society and in whom it vests, members guilty of offences punishable as strangers, legal proceedings, enforcement of judgments and orders and annual general meeting, extraordinary general meeting, minutes of the meeting, amalgamation of

societies, supersession of the committee and appointment of administrator etc.. Chapter IV also contains several provisions, but for our purpose, S. 36 alone is relevant which reads thus:-

36 Power of Registrar to inquire into the affairs (sic) 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 (sic) 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 (sic) inquiry into the constitution, working and financial condition of that registered society.

(2) An application to the Registrar under sub-Section (1) shall be supported by such evidence as the Registrar may require for the purpose of showing (sic) the applicants have good reason for applying for a inquiry.

(3) The Registrar may require the application under sub-Section (1) to furnish such security as (sic) 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 applicant therefore or out of the assets of the registered society or by the members or officers of the registered society, in such proportion if the Registrar may, by order in writing, direct and

(b) on the District Collector's or Registrar's 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 limes have free access to all the books, accounts and documents of the registered society and shall have power to call upon the registered society and the officers of the registered society to produce such books, accounts and documents and furnish such 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 under S. 37, he may issue such direction to the registered society, or any member of the registered society, as the Registrar may deem fit.

Stress is laid by the appellants on the words constitution, working and financial condition "occurring in S. 36(1) of the Act. On the basis of those words, it is contended that the Registrar is entitled to inquire into the question as to who are the members, who can be recognised as having been elected to the Committee to carry on the affairs of the Sangam. It is submitted that Chapter III which deals with management and administration as such" it also covers the working of the society, because a society cannot function without the Committee and how the Committee can be constituted, is also provided in Chapter III of the Act. Therefore, the Registrar, in exercise of his power under S. 36 of the Act is entitled to inquire into the matter only to ensure as to who are members of the Society, who have been elected to the Committee only for the purposes of the Act. On the contrary, it is the contention of the respondents that the Registrar has no such power, therefore, he has acted without jurisdiction. The definition expression "Registrar" has already been extracted. As per the definition, the District Registrar is also the Registrar. As such, he is entitled to exercise all the powers which the Registrar can exercise under the provisions of the Act subject to such administrative directions as may be issued by the Inspector General of Registration, who is the higher authority. The powers of inspection, inquiry, cancellation of registration, winding up are all vested in the Registrar under the various provisions contained in Chapter IV. He can, as a result of the inquiry cancel the registration of a society and also issue directions as deemed fit under the circumstances of each case. It is the Registrar who alone can register a society and it is the Registrar to whom Form No. VII is to be submitted. Any change in the membership or in the Committee also has to be reported to the Registrar, as per S. 15 read with Rule 17 in Form No. VII. S. 15 (3) of the Act specifically provides that 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. It is those members of the Committee who have to report to the Registrar the change in the constitution of the Committee under S. 15(2) of the Act in Form No. VII as prescribed under Rule 17 of the Rules. Thus, it is the Registrar who administers the Act. Therefore, for the purpose of the Act, 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. For this purpose, wherever Form No. VII is filed and the correctness of it is challenged by one or the other party, being the members of the Society/Sangam, he can inquire and find out as to who are elected to the Committee. Otherwise, it would not be possible for him to administer the Act and also exercise control and supervision over the societies in order to ensure that the societies function within

the four corners of the Act and the Rules framed thereunder and the bye-laws formed by them. Of-course, the Act does not prescribe any forum to challenge the election or the grounds on which the election can be challenged nor does it either, by express provision or by necessary implication take away the jurisdiction of Civil Court. As such, the members of the society who claim to have been elected as members of the committees can undoubtedly approach civil court and have their claim adjudicated. It cannot at all be said that such an adjudication falls outside the purview of the Civil court. S.9 of the CPC specifically provides that the Courts shall have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred. It is because of this, as already pointed out, the Act has defined the expression "Court" consequently, the power the Registrar exercises for determining the correctness or otherwise of the change reported in Form VII would be entitled to approach the Court as defined under the Act and have the same adjudicated by the Court. Of-course, if the order passed by the Registrar under S. 36 of the Act is not in accordance with the provisions of the Act and does not conform to the principles of natural justice and is passed without holding an inquiry as required by S. 36 itself, it would be open to the parties to invoke the jurisdiction of this Court under Art. 226 of the Constitution in which event, it would be open to this Court to exercise the jurisdiction or decline to exercise, depending upon the facts and circumstances of each case, and direct the parties to have it adjudicated by the Court as defined in the Act.

7. Thus, on a conspectus of the provisions contained in the Act, we are of the view that the Registrar has power under 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 S. 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. S. (9) of S. 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.

8. Learned single Judge of this Court in *Erode Sarvodaya Sangh v. The Director of Khadi and Village Industries Commission, etc.* (1981 Writ L.R. 820) has also held that S. 36 of the Act enables the Registrar to hold an enquiry into the constitution, working and financial condition of a re-gartered society, of his own motion or on the application of the majority of the members of the committee or on the application of not than one-third of the members of that registered (sic)ciely or if so moved by the District Collector. The enquiry may be held by him or by a person authorised by him. "Registrar" is defined in S. 2(i) as the Inspector-General of Registration appointed under sub-S.(I) of S. 3 of the Registration Act, 1908 or the Registrar of a district appointed under S. 6 of the said Act, or any person authorised by the Government to exercise all or any of the powers of the Registrar under the Tamil Nadu Societies Registration Act. On

the facts of this case already referred to. it is just and proper that an authority higher than the District Registrar of Societies make an enquiry under S. 36 of the Act. I hereby direct the Deputy Inspector General of Registration, Coimbatore, to conduct an inquiry into constitution, working and financial condition of the Society, viz. Erode Sarvodaya Sangh.'" Accordingly, we answer point number (i) in the affirmative. We have also pointed out earlier the extent of the power of the Registrar in the mailer is limited and have also held that it is subject to the adjudication by the Court, if the jurisdiction of the Court is invoked. The power of Registrar is only intended to ensure that the members of the society claiming to have been elected to the Committee are so really elected and the change reported by them is correct.

9. As far as point number (ii), whether the letters sent by registered post and under certificate of posting reached the District Registrar subsequent to 22.4.1994 or earlier, does not make any difference in the case, because the District Registrar has not held an inquiry. He has passed an order on 22.4.1994 itself, the date fixed for filing objections. However, we have already pointed out that the letters must have been delivered either of 22.4.1994 or earlier to that date. Thus, ignoring the letters seeking time and without holding an inquiry but on the basis of the letter containing the signatures of Thiru K. Arivanandapandian and 137 members of the general body requesting for fresh election, the District Registrar has ordered to call for an extra-ordinary general body meeting after giving a month's notice to the general body members, as per S. 128(1) of the Act and has further directed the Principal of the College to take up the responsibility to hold the election in a cordial atmosphere. Thereafter, he has passed an order on 11.5.1994 directing the Principal to complete the election and furnish a list of newly elected office bearers and send the same for the approved to the District Registrar, within the time stipulated as per the order of the District Registrar dated 22/4/1994. The order dated 11/5/1994 is only consequential based upon the order dated 28/4/1994. S. 36(l) provides for an inquiry and S. 36(l) 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. Sub. S. (8) of S. 36 further provides that a person holding an inquiry under S.36 is entitled to summon witnesses and examine them. Then, Sub. S. (9) thereof provides, 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 under S. 37, he may issue such direction to the registered society or any member of the registered society, as he may deem fit. Therefore, it is evident that the inquiry contemplated under S. 36 of the Act is an inquiry which has got all the trappings of a judicial proceeding. As such, the District Registrar was required to record evidence, if any, and hear the parties and pass orders in accordance with law. In this case, it is not in dispute that no such inquiry was held. Therefore, the order passed by the District Registrar on 22/4/1994 and 11/5/1994 are unsustainable, as the same have been passed in violation of the provisions of S. 36 of the Act and are

also opposed to principles of natural justice. Hence, the same are liable to be quashed. Learned single Judge, as already pointed out, has quashed those orders.

10. No doubt, learned single Judge has quashed the impugned orders not on the ground that they have been passed in violation of the provisions contained in S. 36 of the Act and without affording an opportunity to the contending parties, but on the ground that the District Registrar has no such jurisdiction. As we have already held that the District Registrar enjoys such jurisdiction, and we have also held that the orders are passed without following the procedure prescribed under S. 36 of the Act, the same are liable to be quashed. Point (ii) is answered in the negative.

11. The next question for consideration is as to the directions to be issued in the case, as a result of quashing the impugned orders of the District Registrar. The situation that is prevailing in the Sangam, is that there are two groups each group is claiming that members of each group are elected to the Committee of the Sangam. The group consisting of the appellants claim that they have been elected and they have been in the Committee of Management, whereas the group-consisting of Dhanasekarapandian, V.V.S. Yogan, S.V.S. Sundaramoorthy is one of the parties to the proceeding, claim that they have been elected as members of the committee and have functioned as such, and they were also the members of the previous Committee. The term of the old committee has expired on 31.3.1994 in the normal circumstances, we would have allowed the old Committee to continue in the Office until the controversy is decided by the District Registrar, but the two groups are very much agitated if one of the groups is permitted to continue on the ground that they were the members of the old Committee, the conflict may continue and may result in disturbance of peace and the atmosphere in the college is likely to be affected. Therefore, we are of the view that until the District Registrar decides, the management of the affairs of the Sangam shall be under the control of the District Registrar. The Principal shall run the administration of the College as per the directions that may be issued by the District Registrar, Madurai. We also further direct that none of the groups should interfere with the administration of the Sangam and the College by the District Registrar and the principal of the College. If any of the parties is having the record, the same shall be handed over to the Principal of the College, who shall, if necessary, make available the same to the District Registrar. The District Registrar shall decide the issue as to which Form VII is to be approved within a month from today. The parties are directed to appear before the District Registrar, Madurai, on 27/7/1994 and file respective statements of case and also documents, if any, in support of their case. It is open to the District Registrar to fix such date as is convenient to the parties to hold an inquiry and decide the issue. In the event the District Registrar accepts any one of the Form VII he shall hand over the management of the Sangam to that group. The Writ Appeals are accordingly disposed of. In the facts and circumstances of the case, there will be no order as to costs.

ORDER: (K.A. Swamy, C.J. 27.7.1994):-

In this case, we have directed the parties to appear before the District Registrar (Societies), Madurai, to-day (27-7-1994). It appears that a copy of judgment has not been despatched to the District Registrar. We, therefore, modify the date and direct the parties to appear before the District Registrar (Societies), Madurai, on 3-8-1994.