

(1997) 12 KL CK 0007
In the High Court Of Kerala
Case No : W.A. No. 1494/97

Mohammed Zainuddeen Musliar

APPELLANT

Vs

A.P. Aboobacker Musaliar and Others

RESPONDENT

Date of Decision : 08-12-1997

Acts Referred:

Constitution of India, 1950 — Article 235
Societies Registration Act, 1860 — Section 4, 5

Citation : (1997) 12 KL CK 0007

Hon'ble Judges : U.P. Singh, C.J.; S. Sankarasubban, J

Bench : Division Bench

Advocate : T.R.G. Warriyar and R. Ramadas, for the Appellant; Preethy Ramakrishnan, Government Pleader for Respondent No. 2, P.K. Muhammed, for Respondent No. 4, S. Venkita Subramanya Iyer and V. Giri, for the Respondent

Final Decision : Allowed

Judgement

S. Sankarasubban, J.—This Writ Appeal has been filed by the additional fourth Respondent in O.P. No. 9323/90. The Original Petition was filed by A.P. Aboobacker Musaliyar, who is the first Respondent in the appeal, The Original Petition was filed challenging Ext. P-3 proceedings passed by the District Registrar (General), Kozhikode.

2. The Appellant is the General Secretary of the Samastha Kerala Jem-eyyathul Ulama (hereinafter referred to as "the Samastha"). The Samastha had its genesis as an unregistered organisation of Muslim Religious Pundits in Kerala constituted in 1925 for the purpose of diffusion of religious teachings to the Sunni Muslim in Kerala and outside. The organisation was later registered under the Societies Registration Act and the registration number is 5-1/1934-35.

3. The objects of the "Samastha" is contained in the Memorandum of Association and the Rules and Regulations. The Apex Body of the Samastha is a body of 40 persons, who have deep knowledge in religious studies elected by the General Committee, which is known as "Musavara". The "Musavara" is originally elected

by the General Committee from the persons who are highly qualified in religious learning and is almost a permanent body. The vacancies in the Musavara are filled up by the General Committee on the recommendation of the Musavara. No election of Musavara members is prescribed to be conducted regularly or periodically.

4. The second Respondent in the Original Petition, E.K. Aboobacker Musaliyar was the General Secretary of the Samastha in the year 1956 and continued till his death in 1996. The Petitioner in the Original Petition was a member of the Musavara. By the end of 1988, according to the Appellant, there was an attempt for the revolt in the Samastha engineered by the Petitioner and his henchmen. In 1989, the Petitioner and his henchmen failed in their attempt through courts. Thereafter, they convened meetings of their faction and began to make false claim of constituting separate Samastha and separate establishments. When the activities of the Petitioner and his henchmen were against the interest of the Samastha, the matter was considered in the meeting of the Musavara held on 18th February 1989. The Petitioner and five Ors. were expelled from the Musavara. According to the Petitioner, the Musavara that was in existence till 1989, was not a properly elected group of representatives. In the general body meeting held on 5th March 1989, 40 members were elected and constituted a Musavara of the Samastha. Again in December 1989 the general body met and elected the very same persons for the year 1991. The Petitioner was elected as the Secretary.

5. In terms of Section 4 of the Societies Registration Act, the Petitioner as the Secretary of the General Committee, submitted a list of Musavara of Samastha for the year 1990-91 before the first Respondent on 1st January 1990, which is produced as Ext. P-1 in the Original Petition. According to the second Respondent, he was the competent person to convene the general body meeting and he did not call any meeting on 5th March 1989. He further submitted that since already a Musavara is in existence, there was no question of election of a new Musavara. The second Respondent also denied that the Petitioner was elected as Secretary. He further contended that ever since the registration of the Samastha in 1934, the list of Musavara members was furnished to the first Respondent u/s 4 of the Societies Registration Act. According to him, for the year 1990, he submitted Ext. P-2 list on 6th January 1990. There were 37 members in Ext. P-2 list. 3 vacancies in the Musavara were not recommended by the Musavara and hence not filled up by the General Committee. Thus, the first Respondent had two lists before him, viz., Exts. P-1 and P-2. The first Respondent Registrar called for both the parties and after scrutiny, accepted Ext. P-2 list by his proceedings, Ext. P-3. It is Ext. P-3 that was challenged before the learned Single Judge. The learned Single Judge, on an interpretation of Section 4 of the Societies Registration Act, held that the Registrar had no power to resolve any dispute between two rival groups. Hence, the learned Single Judge held that Ext. P-3 was issued incompetently and without jurisdiction. Ext. P-3 was quashed. During the pendency of the appeal, the second Respondent died and the present Appellant

was thereafter elected as General Secretary. He was impleaded as additional fourth Respondent. He has filed the appeal against the judgment of the learned Single Judge.

6. The question for consideration is what is the power of the Registrar u/s 4 of the Societies Registration Act. Section 4 of the above Act states as follows:

4. Annual list of managing body to be filed.- Once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of January, a list shall be filed with the Registrar of Joint-Stock Companies, of the names, addresses and occupations of the governors, council, directors, committee, or other governing body then entrusted with the management of the affairs of the society.

Thus, under this section, it is the duty of the Society to submit to the Registrar, the names, addresses and occupations of the governors, council, directors, committee, or other governing body then entrusted with the management of the affairs of the Society. Normally, if there is no dispute there will be only one Managing Committee or Governing Committee. So the Registrar will have no difficulties in accepting the same. But the question arises whether there is difference or dispute as to who are the members of the Governing Committee. Is there any discretion vested with the Registrar to accept one list and reject the other. The learned Single Judge held that the Registrar has no power to decide a dispute u/s 4 of the Societies Registration Act.

7. Before considering the question as to whether any power is vested in the Registrar, we have to find out the importance of the submission of the list of Managing Committee. u/s 5 of the Act, the property, movable and immovable, belonging to a society registered under the Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such Society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such Society by their title. u/s 6, every Society registered under the Act may sue or sued in the name of the President, Chairman, or Principal Secretary or Trustees, as shall be determined by the Rules and Regulations of the Society, and in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion. Thus we find that there has to be a list containing office bearers or the members of the governing body with whom the property may vest or who can represent the Society in the litigations. Hence, the filing of the list cannot be lightly brushed aside as merely an administrative act.

8. It is well accepted that the conferment of statutory powers must be construed as impliedly authorising everything which could fairly and reasonably be regarded as incidental or consequential to the power itself. Wade in Administrative Law, Fifth Edition at page 217 has held as follows:

A statutory power will, however, be construed as impliedly authorising everything

which can fairly be regarded as incidental or consequential to the power itself; and this doctrine is not to be applied narrowly.... Statutory powers therefore have considerable latitude, and by reasonable construction the courts can soften the rigour of the ultra vires principle.

See Craies on Statute Law, Seventh Edition and at page 111, it was said:

If a statute is passed for the purpose of enabling something to be done, but omits to mention in terms some detail which is of great importance (if not actually essential) to the proper and effectual performance of the work which the statute has in contemplation, the courts are at liberty to infer that the statute by implication empowers that detail to be carried out. Thus, in *Cookson v. Lee* (1854) 23 L.J. Ch. 473 a private Act vested certain lands in trustees for the purpose of enabling them to sell the lands for building purposes, but the Act contained no express power to expend any portion of the purchase moneys in setting out the lands or in making roads. In these circumstances the court held that, having regard to the object of the Act-namely, the sale of the property as building land-such power ought to be implied.

9. In the case of *State of Uttar Pradesh Vs. Batuk Deo Pati Tripathi and Another*, the question arose as to the power of the High Court under Article 235 of the Constitution of India. The Supreme Court held that the High Court has, therefore, the power under Article 235 itself to frame rules for regulating the manner in which the control vested in it may be exercised. The power to do a thing necessarily carries with it the power to regulate the manner in which the thing may be done. In *Khargram Panchayat Samiti and Another Vs. State of West Bengal and Others*, the above question came up for consideration. There, Their Lordships were considering section, 117 of the West Bengal Panchayat Act, 1973. Under that section, the Panchayat had the power to grant licence for holding a "hat" or "fair". The question was whether it had the consequential or incidental power to specify a day for holding of such "hat" or "fair". In considering that question, the Supreme Court held as follows:

The conferment of the power to grant a licence for the holding of a hat or fair u/s 117 of the act includes the power to make incidental or consequential orders for specification of a day on which such hat or fair shall be held. The decision of the High Court runs counter to the well accepted principles. It overlooks that the statutory bodies like the Panchayat Samiti enjoy a wide "incidental power", i.e. they may do everything which is "calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions"....

10. In the aforesaid background, we have to find out the scope of Section 4 of the Societies Registration Act. The filing of the returns with regard to the office bearers is for a purpose. The mere fact that the section does not clearly state that the Registrar has got power with regard to the acceptance of the returns does not mean that he can accept any number of returns with regard to the same Society. That will not serve the purpose of filing of the returns as

contemplated. Thus, in the case of a dispute when more than one return is filed, the Registrar has got the power to find out as to which one he should accept. There may not be an elaborate enquiry. Prima facie he has to satisfy as to which return is to be accepted. In this case, we find that the list given by the Appellant was accepted, because it had the support of court orders and also it was being followed for a large number of years. No doubt, such an enquiry made by the Registrar and the decision taken from it does not become final. The party can take up the matter before a competent court as to who are the members of the governing body.

In view of the above, we are of the opinion that the proceedings of the Registrar, Ext. P-3, is correct. Hence, we allow the appeal and dismiss the Original Petition.