

(1937) 02 MAD CK 0013
In the Madras High Court

M.P.S. Syed Muhammad Salihu Rowther	APPELLANT
Vs	
Syed Sultan Mohideen Sahib alias S.S. Mohideen Sahib and Another	RESPONDENT

Date of Decision : 19-02-1937

Acts Referred:

Religious Endowments Act, 1863 — Section 10

Citation : (1938) 1 MLJ 386

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—A vacancy occurred in the Tinnevely District Mosque Committee. u/s 10 of the Religious Endowments Act of 1863, all

persons interested can elect a member to fill the vacancy. If that is not done within three months, the Civil Court, on the application of any person,

may appoint a person to fill the vacancy. In the present case the District Judge of Tinnevely was moved to fill this vacancy; but he declined to do

so and ordered that the vacancy be forthwith filled up by the remaining members of the committee. Applications for the vacant post put in before

the District Judge were forwarded to the committee for consideration and notices were affixed to the principal mosque in the District and in the

office of the committee. Before the meeting notices went to all the four members, of the committee; but one refused to attend. He wrote a letter to

the Court stating that he was quite sure that the remaining three members intended to appoint the petitioner and that he had no intention of attending

the meeting as he did not agree with them. The remaining three members appointed the petitioner. A number of the disappointed candidates

thereupon moved the District Judge to declare that the vacancy had not been

filled by the committee and to appoint a suitable person himself. The District Judge came to the conclusion that a plain reading of Section 10 showed that the vacancy can be filled up only by the unanimous assent of the members. He further concluded from the evidence of one of the members of the committee (P.W. 3) who took part in the selection, that the claims of all the applicants had not been properly considered. He therefore held that the petitioner had not been appointed by the committee and proceeded u/s 10 to fill the vacancy himself by appointing the respondent.

2. The main point for consideration in this petition is whether it was necessary for all the four remaining members of the committee to be unanimous in their selection. I need not refer to the very many cases cited by Mr. Pocker for the petitioner, because they relate to acts of a corporate body

such as the committee itself was; and it is not even necessary to consider whether the committee could have functioned after one of its members

were dead, although it may be said in passing that A. Santhalva Vs. Manjanna Shetty is an authority for the position that when a member of the

committee dies the remaining members do not constitute a committee and cannot act as such. The very wording of Section 10 shows that it has

reference only to the remaining members of the committee and not to the committee. A corporation is more than the sum of its members and has

certain powers as a body not possessed by the members of the corporation. The reference in Section 10 to the remaining members emphasises the

fact that the remaining members are not the committee; and so it is not the corporate body of the committee that fills up the vacancy but the

surviving members. Nevertheless, it seems to me that these four remaining members were a select body given statutory powers under the section to

fill up the existing vacancy; so that the nature of this body is very similar to that of a corporation with one sole object and power. In Halsbury, Vol.

VIII, page 53 (2nd Edition), Section 90 are set out the powers of a select body and it is seen that in important respects a select body resembles a

corporation, in that acts can be performed, for example, not merely by the members acting unanimously, but by a majority of those present if more

than the majority of the members are present. It is argued that a select body can derive its powers only from the corporation itself; but I do not

think that the term "select body" need be limited to a committee of a

corporation. I do not see why a select body should not be given special statutory powers such as has been given to the remaining members of the committee u/s 10 of the Religious Endowments Act. In *Rasa v. Ali* (1916) 33 M.L.J. 348 : ILR 40 Mad. 941, it was held in a case somewhat similar to the present that the electoral body was a select body which had the well-recognised powers to do acts approved by a majority present if more than a majority of the members were present at the meeting.

There a committee of five persons and three mutavallis formed an electoral body; and if a mutavalli died, the remaining mutavallis and the five members of the committee could elect a mutavalli to fill the vacancy. It was held there that all that was necessary was that a majority of this electoral body should be present and that a majority of those present should be in favour of the candidate elected. That case is sought to be distinguished on the ground that an election was spoken of and that an election implies that there should be some difference of opinion among the members of the electoral body. However that may be, it was the finding of the bench which tried that case that the body was a select body as ordinarily understood at common law. This decision is an important one as it is the only case quoted on either side that has any real bearing on the question under discussion. The duty of filling up this vacancy was clearly conferred upon these four members as a body; and it would therefore seem that the ordinary rule that the opinion of a majority suffices would prevail. Mr. Ramachandra Aiyar has sought to assimilate the position of these four members of the committee to that of trustees who have been delegated authority by the founder of a trust, the equivalent of the founder of the trust being the District Judge who, it is said, has delegated this authority to four specific persons. I do not think that this argument flows happily from the wording of the section. It may be true that the power of the members is derived from the District Judge in the sense that they obtained the power to fill the vacancy in the event of the District Judge declining to do so; but their power is an alternative power and once the District Judge fails to exercise his power to fill the vacancy the other provision of Section 10 operates, under which the remaining members of the committee are empowered to fill the vacancy. They are not four specified persons but such members of the committee as are still alive.

3. The other ground on which the learned District Judge has declared that no election has been held is that from the evidence of one of the members of the committee (P.W. 3) it would appear that the proceedings of the members was of a rather summary nature. According to P.W. 3, the President and the other members of the committee wished the petitioner to be appointed and asked him if he agreed. After he had seen the words of the resolution thus written down, he suggested that the other applicants might be interviewed. The other two members replied that the petitioner was a suitable man and that there was no need to see the others. Even if this account be true, I do not think that it was necessary for the committee to carefully read over the applications of all the candidates. They knew what men were available and what were their qualifications, and it was quite natural that they should have thought as soon as the vacancy came into existence that one person was more fitted to fill the vacancy than another. Even if it be true that they were actuated by the knowledge that the petitioner was amenable to their influence, their election would not be void - especially as it cannot be said that the petitioner is unsuitable for the office. It seems better that the members should select some person with whom they can work rather than one more intelligent and capable with whom they could not get on in committee.

4. The District Judge would perhaps have been well advised to have considered the volume of protest from all the candidates for the office and not to have referred the matter to the surviving members of the committee, but having done so he cannot express dissatisfaction with their choice and attempt to over-ride their decision and avoid it.

5. It is with some reluctance that I interfere with the order of the learned District Judge on this point, arrived at by him after a careful consideration of the law, which is singularly lacking in authority, and of the conduct of the remaining members of the committee: but I feel that he has proceeded on wrong principles and has expected from the members of the committee a judicial impartiality such as is not to be expected from a committee of this nature.

6. The petition is therefore allowed, the order of the District Judge set aside, and the selection by the committee of the petitioner restored. No order as to costs.