

(2010) 06 AP CK 0051

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 27716 of 2008 and 6277 of 2010

P. Shivaraj Sampathy and Others

APPELLANT

Vs

The Commissioner and Inspector General, Stamps and
Registration and Others

RESPONDENT

Date of Decision : 14-06-2010

Acts Referred:

Andhra Pradesh and Telangana Societies Registration Act, 2001 — Section 14, 2(1),
23, 3, 7(2)
Penal Code, 1860 (IPC) — Section 156

Citation : (2010) 5 ALD 516 : (2010) 6 ALT 202

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : V. Sai Kumar and S. Niranjan Reddy, for the Appellant; G.P. for
Revenue, S. Niranjan Reddy and M.V.S. Sai Kumar, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—A private dispute between two half brothers is projected in these two writ petitions as a public law dispute and a relief is sought against the Registrar of Societies constituted u/s 2(1) of the Andhra Pradesh Societies Registration Act, 2001 (the Act).

2. The brief background of these cases as culled out from book pleadings and other documents is as follows. Late S.P. Sampathy started S.P. Sampathy's Siva Sivani Educational Society (hereafter called, the Society). By reason of a judgment of the Court of District Judge, Ranga Reddy, in O.P. No. 479 of 1997 the said Society is deemed to have been established in 1997 with Registration No. 2906 of 1997. Indisputably, the said Educational Society has established Siva Sivani Public School at Sanga Reddy, Orchids International School at Budhera and another school near Kompally in Ranga Reddy District. The Society's Managing Committee among others is father S.P. Sampathy, a son Shivaraj Sampathy, his wife Manjula Sampathy and another son Sailesh Sampathy. After

death of father, disputes arose between Shivaraj and Sailesh. Sometime in 2003 Sailesh submitted a list of Office bearers to the Registrar of Societies as required u/s 9 of the Act. The same was taken on record by the Registrar on 20.09.2003. In the communication submitted along with the list of Office bearers Sailesh appears to have been represented that Shivaraj and his wife Manjula submitted resignations on 29.12.2002. They alleged that they never submitted resignations and Sailesh fabricated, forged and concocted resignations letters and got the list of office bearers approved officially. Both of them also lodged a report with P.S.Chikkadpally on 15.10.2005, being Crime No.369 of 2005 u/s 156 of the Indian Penal Code, 1860. The Police after completing investigation filed report on the file of the Court of IX Additional Chief Metropolitan Magistrate, Hyderabad, to the effect that report is false. The complainants statelty filed objections/protect application before the learned Metropolitan Magistrate, which is pending. In the meanwhile, they filed W.P. No. 27716 of 2008 challenging the action of the Registrar in taking the list of Office bearers submitted by Sailesh on record. This Court admitted the writ petition on 20.01.2009 and ordered notice in the miscellaneous petition, being W.P.M.P. No. 36313 of 2008 in which a direction is sought to the Registrar not to take on record any further changes and amendments to the list of Office bearers of the Educational Society. The petitioners therein filed W.P.M.P. No. 36474 of 2008 to implead Smt. Arathi, W/O. late S.P. Sampathy as respondent No. 3. The same was ordered on 22.12.2008. She filed a detailed counter affidavit along with various documents.

3. When the writ petition filed by Shivaraj and another is pending before this Court the Society amended its byelaws and submitted the amendments vide letter dated 10.03.2010. When the same were not taken on record in which event alone the amendment of byelaws would come into force, the Society filed W.P. No. 6277 of 2010 seeking a writ of mandamus declaring the action of the Registrar in not accepting the amendments/alterations of records as illegal and arbitrary and for a consequential direction to do so. Shivaraj and his wife Manjula are impleaded as respondent Nos. 2 and 3 and are represented by their Counsel. But, they have not filed any counter affidavit, and when the matter is heard, the Counsel is absent.

4. Counsel for the Society represented by Sailesh and Counsel for the two Directors who were alleged to have submitted the resignations in 2002 it self made their submissions. The attention of this Court is also invited to Andhra Pradesh Kuruma Sangam Vs. Registrar of Societies,

5. There appears to be a deep-rooted animosity between two half brothers and therefore allegations are thrown at each other with which this Court is not concerned. The only issue is when the Society submits the amendments made by way of Special Resolution for taking on record whether the Registrar can keep it pending or reject the amendments.

6. Andhra Pradesh Societies Registration Act, is consolidating law repealing Societies Registration Act, 1860 (Central Act 21 of 1860) in its application to

Andhra Area of State of Andhra Pradesh and also repealing Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 Fasli (Act 1 of 1350 Fasli). Therefore, while interpreting any provision of the Act the object behind enacting consolidating law cannot be ignored. The statement of objects and reasons for enacting the law as appended to the Bill reads as under. Statement of objects and reasons.

7. At present, the law relating to the Societies and their registration, is governed by the Societies Registration Act, 1860 (Central Act 21 of 1860) in the Andhra Area of the State of Andhra Pradesh and by the Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 Fasli (Act 1 of 1350 Fasli) in the Telangana Area of the State of Andhra Pradesh. The said Acts are found to be not exhaustive in certain material aspects. In order to have comprehensive law and to secure uniformity in the laws applicable throughout the State, it is proposed to have single and comprehensive legislation in this behalf applicable to the entire State by repealing the Societies Registration Act, 1860 in its application to the Andhra Area of the State of Andhra Pradesh and the Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 F.

8. The Andhra Pradesh Societies Registration Bill, 1999 has been introduced in the Legislative Assembly of the State on 23rd March, 1999 as L.A. Bill No. 4 of 1999 and the same has lapsed due to dissolution of the Tenth Legislative Assembly. It is, therefore, decided to reintroduce the same Legislation. This Bill seeks to give effect to the above decisions. (emphasis supplied)

9. The Act has five chapters. Chapter II deals with registration of Societies and chapter III deals with management and administration of a Society. Each society shall elect a Committee consisting of not less than three members which shall manage and administer the society (see Section 14 of the Act). Society is a body registered u/s 3 of the Act. Every society is required to have memorandum of association and byelaws of society. The byelaws of the society shall contain provisions in respect of the matters like i) name of the society ii) activities of the society iii) membership of the society and the eligibility criteria, procedure for withdrawal and termination of membership iv) the manner of conducting general body meetings v) office bearers and vi) financial matters including liabilities. When once the memorandum of bylaws are submitted at the time of registration and based on the same a certificate of registration is issued by the Registrar u/s 7(2) of the Act, the byelaws cannot be amended except in accordance with the procedure contemplated u/s 8 of the Act, which reads as under.

10. Amendment of memorandum and Bye-laws:

(1) By a "Special Resolution" a society may alter the provisions of the memorandum with respect to,

(a) change of objectives of the society;

(b) to amalgamate itself with any other society; or

(c) to divide itself into two or more societies.

(2) Subject to the provisions of this Act, and the conditions contained in its memorandum, a society may, by an ordinary resolution passed by not less than 1/2 (half) of the members present and voting alter its bye-laws.

(3) Any alteration of the memorandum of the society shall not be valid unless such alteration is registered under this Act.

(4) If any alteration of the memorandum is filed with the Registrar and if they are not contrary to the provisions of this Act, he shall register the same and shall certify the registration of such alteration under his hand and seal within thirty days from the date of receipt of the resolution. The certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the certification thereof have been complied with and henceforth the memorandum as so altered shall be the memorandum of the society.

(5) Every alteration in the bye-laws of the society should be sent to the Registrar and he shall take it on record if it is not contrary to the provisions of this Act.

11. A plain reading of Sub-sections (3) and (5) of Section 8 of the Act would show that any amendment/alteration of byelaws made by the Society (that is to say, the general body of the Society) in accordance with the procedure laid down in the byelaws shall not be valid and enforceable unless it is registered by the Registrar of the Societies. When a Special Resolution is passed by the general body of the Society in accordance with Section 8(2) of the Act under relevant byelaws proposing amendments/alterations to the memorandum or byelaws they have to be submitted to the Registrar who "shall take it on record if it is not contrary to the provisions of the Act." While doing so how the Registrar has to proceed with the legislative guidance is provided by Section 8(4) of the Act, which reads as under.

12. If any alteration of the memorandum is filed with the Registrar and if they are not contrary to the provisions of this Act, he shall register the same and shall certify the registration of such alteration under his hand and seal within thirty days from the date of receipt of the resolution. The certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the certification thereof have been complied with and henceforth the memorandum as so altered shall be the memorandum of the society.

13. A reading of Sub-sections (4) and (5) of Section 8 of the Act would show that the Registrar of Societies cannot refuse to take it on record unless such amendments are contrary to the provisions of the Act. The mere dispute between the Society and its members or a dispute with regard to the question whether some of the members submitted resignations or not is not a ground on which the Registrar can refuse registration. Further, even if there are criminal cases pending, which are filed by the minority members against majority, if a Special Resolution is passed by the majority of the members, the Registrar is precluded

from refusing the registration, that is to say, taking the amendments on record. There is no dispute in this case that except the fact that Shivaraj Sampathy and Manjula Sampathy are disputing about their resignations, there is no dispute that the resolution amending byelaws was passed by the Society by majority members. As pointed above, though they are respondent Nos.2 and 3 in W.P. No. 6277 of 2010, Shivaraj Sampathy and Manjula Sampathy have not filed counter affidavit. In Andhra Pradesh Kuruma Sangam (supra) this Court considered a similar question and came to the conclusion that in the absence of any dispute raised u/s 23 of the Act, the Registrar cannot refuse to take the amendments on record. The relevant observations are as follows.

14. It is to be further seen that Section 8 is a special provision, which deals with Special Resolutions of the society regarding alterations of the provisions of the memorandum of the society. Section 23 of the Act, as already pointed out, is a specific provision, which deals with disputes, dissolution and winding up of the societies. The dispute may be among the Committee or the members of the society, and when such a dispute as mentioned in Section 23 of the Act arises, it is required to be resolved by resorting to arbitration under the provisions of the Arbitration and Conciliation Act, 1996 or on application to be filed in the District Court concerned.

15. Inasmuch as there is no dispute by any member of the society or member of the Managing Committee, the respondent is at an obligation to consider the same as contemplated under Sub-section (4) of Section 8 of the Act. However, it is clear that the respondent can advise any member of the society or member of the Managing Committee who raises a dispute, that too regarding the resolution or winding up or any dispute relating to the affairs of the society, to approach the District Court concerned or to take recourse to the provisions of the Arbitration and Conciliation Act, 1996.

16. In view of the fact that the two members who filed W.P. No. 27716 of 2008 only dispute their resignation letters, but have not so far raised any dispute u/s 23 of the Act, with holding of the formality of taking the amendments submitted by the Society on record is illegal. Mere pendency of W.P. No. 27716 of 2008, as rightly pointed out by the Counsel for the Society, is no ground for not discharging the statutory duty u/s 8(5) of the Act.

17. Therefore, W.P. No. 27716 of 2008 is dismissed. W.P. No. 6277 of 2010 filed by S.P. Sampathy's Siva Sivani Educational Society is disposed of directing the Registrar of Societies, first respondent therein, to take the amendments submitted by the Society along with letter dated 10.03.2010 on record. It shall be open to the opposite parties to raise a dispute u/s 23 of the Act before the competent Court. In view of the relationship between the parties, this Court is not inclined to make any order as to costs.