
(2001) 09 MAD CK 0015

In the Madras High Court

Case No : O.A. No. 556 of 2001 in Application No. 2890 of 2001 in Civil Suit No. 487 of 2001

P. Venugopal

APPELLANT

Vs

The Music Academy, Madras

RESPONDENT

Date of Decision : 28-09-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Tamil Nadu Societies Registration Act, 1975 — Section 12, 15, 15(3), 16, 18

Citation : (2001) 09 MAD CK 0015

Hon'ble Judges : A.K. Rajan, J

Bench : Single Bench

Advocate : T.V. Ramanujam, for M/s. T.V. Krishnamachari, for the Appellant; R. Krishnamoorthy, for R.2, Mr. Mohan Parasaran for R.2, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Rajan, J.—Plaintiff is the member of the Music Academy which is a society registered under the Tamil Nadu Societies Registration

Act. The plaintiff has filed the suit (i) for declaring that the bye-laws 12 (e), 19, 26, 35 and 36 of the defendants-Society are void as they are

contrary to the Act and Rules; for mandatory injunction to bring the bye-laws of the Society in consonance with the provisions of the Tamil Nadu

Societies Registration Act, 1975; (ii) for a declaration that the constitution of Board of Trustees consisting of 7 members who are nominated by the

Executive Committee for six years is void, as they are contrary to the Act; (iii) for mandatory injunction to constitute the Board of Trustees from

among the elected office-bearers; (iv) for permanent injunction restraining the defendants from in any way filling up the vacancies in the Trust Board

of the defendant-Society by nomination from among the members who are not

elected office-bearers; (v) for a mandatory injunction, not to delegate powers vested with the management of the defendant society which is a non-statutory body; (vi) for mandatory injunction to restrict the powers of the board of trustees; for mandatory injunction to comply with the mandatory provisions of Tamil Nadu Societies Registration Act, 1975 and for further reliefs.

2. Original Application No. 556 of 2001 has been filed for an injunction restraining the respondent/defendant society from in any way filling up the vacancies arising on the retirement of the three trustees from the Trust Board, namely Mr. R. Ramakrishnan, Mr. S. Ramasami and Mr. N. Kumar, retiring on 8.7.2001, 25.8.2001 and 30.9.2001 respectively.

3. Application No. 2890 of 2001, another application, is to direct the defendants to appoint trustees from among the 23 elected office-bearers elected in the Annual General Body Meeting.

4. In the common affidavit filed in support of the Judge's summons in the above applications, it is stated that the affairs of the Music Academy are not being conducted as per the provisions of Act and Rules; it does not have an authenticated bye-laws registered with the Registrar of Societies as contemplated under Sections 6 to 8 and 12 of the Tamil Nadu Societies Registration Act, 1975. Music Academy was registered in the year 1929-30 under the Tamil Nadu Societies Registration Act. After the commencement of the Act, 1975, it is now governed by that Act. Therefore, it is bound to bring the bye-laws in consonance with the Tamil Nadu Societies Registration Act, 1975. Music Academy is not in a position to give the correct bye-laws; the affairs of the Society are, in effect, being managed by a single person, namely the Executive Trustee. He is deciding everything and the elected office bearers have no say in the day-to-day affairs of the defendant society. The society has got an elected committee consisting of 23 members. The affairs of the society has to be managed only by the elected body. Section 18 of the Tamil Nadu Societies Registration Act, 1975 only deals with vesting of properties with the trustees. It does not give any right to the trustees to manage the day-to-day affairs of the society and its functions. The Board of Trustees is consisted of 7 members nominated by the committee. Such nomination is not legal.

They have to be elected as contemplated u/s 15 of the Act from out of the

elected office bearers. The Board of Trustees cannot consist of non-elected members. The trustee can hold office for three years; when the elected committee can hold office for three years, he cannot nominate a person as trustee to hold office for six years. Therefore, bye-laws 35 and 36 of the Society giving wide power to the trustees, ultra vires the Act and Rules. Further, the bye-laws makes the Executive Committee subject to the powers of the trustees which is contrary to Section 15 of the Act. Bye-law 18 provides that even the budget prepared by the Executive Committee will be incorporated by the Board of Trustees. Bye-laws 19 and 26 make the powers of the Executive Committee subject to the powers vested in the Board of Trustees. Such a bye-law is invalid it is in violation of the Act. Bye-laws 35 (d) and 36 give all the powers to the Board of Trustees. The term of two trustees has already been over and another trustee is to retire on 30th September, 2001. Therefore, in the interest of the justice, an order of injunction restraining the defendants from filling up the vacancies is to be granted. Further in the interest of justice, it will be just to issue directions to respondents to constitute a Board Trustee from among the 23 elected office-bearers elected in the Annual General Body Meeting on 24.6.2001, so as to bring the Board of Trustees with the consonance of the Act.

5. (a) A common counter-affidavit has been filed by the Music Academy. Music Academy was founded in the year 1927 and registered as per

Section 7/29-30. As per the bye-laws, four categories of members are envisaged, viz., (a) Patrons, (b) Donors, (c) Life Members and (d)

Ordinary Members. When a person becomes member of one of the categories, he is furnished with the copies of the bye-laws of the society. After

becoming a life-member along with his parents, plaintiff/applicant has chosen to challenge the validity of bye-laws. It is not correct to say that the

affairs of the Music Academy are being carried on only by a single person, viz., Executive Trustee. The affairs of the Music Academy is conducted

by an Elected Committee comprising of 23 members headed by President, 6 Vice-Presidents, 4 Secretaries and 12 Members apart from

distinguished and eminent citizens of Chennai who are members of the Academy.

(b) The plaintiff who became a member in December, 1999 has come to the Court challenging the conduct of day-to-day affairs, without being

fully aware as to the contradiction made by several eminent and distinguished citizens of the country right from 1927. Music Academy is one of the premier institution established for the cause of preservation of music and art. As per the bye-laws, the day-to-day conduct of the Music Academy is vested only with the secretaries who are elected office-bearers as per the bye-law 26. Further the general management and control of the affairs of the Music Academy is vested in the Governing Body, viz., the Executive Committee which comprises of 23 elected members and trustees of not less than 5 and not more than 9 members of the Academy who are in turn only nominated by the Committee. This cannot be said to be antithetical to the Act. It is incorrect to say that the day-to-day affairs is vested only with the Executive Trustees. Bye-laws have been so framed that the Elected Body as well as nominated Board of Trustees would be in charge of the affairs of the Academy. Section 16 of the Act deals with the constitution of the Committee of every registered society. Section 15 of the Act deals with constitution of the Committee of every registered society. Section 18 deals with not only about the Committee, but also trustees. Therefore the Act itself contemplates the existence of the trustees, apart from the Committee. The trustees were appointed by the elected body, viz., the Executive Committee as per bye-law 36 (a) (iii). Such appointment of trustees has been in vogue for several decades. Board of Trustees is a mixture of both elected committee members appointed by the elected body. They are answerable to General Body. A person can be appointed by the trustee only if he is a member of the society. Therefore, nomination of the trustee is not ultra vires. A trustee if found unfit can always be removed as per the bye-law 11(c). As per the bye-laws, only the Executive Committee is in full charge of the administration including the removal of members which also included members who are appointed as trustees.

(c) There is nothing illegal in making the trustees as members of the Executive Committee. The averment that the Board of Trustees comprised of wholly unelected bodies is unfounded. The constitution of the Board of Directors does not militate against the provisions of the Act.

(d) The applicant has no prima facie case, nor does balance of convenience lie in favour of the applicant. The suit involves interpretation of the

Tamil Nadu Registration Act. Therefore, the Registrar of Societies has not been added as parties. The applications are liable to be dismissed for nonjoinder of necessary parties.

6. Counsel for the plaintiff argued that u/s 16 of the 1860 Act, a Governing Body could consist of governors, council, directors, committee,

trustees, or other body. As per Section 15(1) of the present Act, only the Governing Body has to manage the affairs of the society. As per Section

53 of the present Act, all the societies registered under the Act are deemed to have been registered under the present Act. Therefore, the Act and

Rules of the present Act applies to all those societies even though they were registered under 1860 Act. This Court in the decision reported in R.

Karuppan Advocate v P.K. Rajagopal, Secretary, Advocates" Association, High Court (2001 (3) CTC 486) has held that any bye-law violative

of the Act or Rules made thereunder is invalid. Therefore, only such of those bye-laws which are in consonance with the Act and Rules, which are

not violative of the Act and Rules alone are valid. Therefore, the counsel for the plaintiff argued that under the new Act, all the members of the

Committee defined u/s 2 (a) which is the Governing Body shall be elected as per Section 15 (3) of the Act. Further, the term of the Committee

shall not exceed three years. But as per the bye-law 12, the powers of the Committee is made subject to the powers of the trustee. Similarly,

Clause 19 also makes the Committee subject to the powers of the trustees; that is, the powers of the Committee is made subject to the powers of

the Board of Trustees. Under the Act the Committee consists of elected member; whereas the board of trustees is not elected; they are only

nominated and therefore, the Committee consists of even non-elected members. The making of the elected body subject to the nominated body is

contrary to the Act.

7. The learned Senior Counsel for the appellant Mr. T.V. Ramanujam argued further that though the properties of the Association can vest in the

trustees, the powers of the Trust Board cannot be so wide. The entire governance is given to the Board of Trustees alone. Further the Trustees can

hold office for a period of 6 years whereas as per the Act, the Committee Member can hold office only for a period of 3 years. That apart, the

Committee comprises also elected trustees, but the trustee so elected will hold

office for 6 years. Therefore, the body which is valid for 3 years cannot elect a trustee to be in office for 6 years. Therefore, bye-laws relating to the composition and powers of trustees are ultra vires of the Act and Rules and therefore, the provisions relating to the Board of Trustees, election of trustees etc., are invalid.

8. Mr. Mohan Parasaran, counsel for the respondents argued that the office of trustees is not alien to the Act. The Act itself recognises the trustees

in Section 5 as well as in Section 16. Even under 1860 Act, which is similar to Section 15 of the present Act provided that the properties of the

Association could be vested in the trustees. Once the properties are vested in the trustees, the trustees cannot be kept outside the Governing

Body. They are members of the Governing Body. In this case, the properties were purchased as early as 15.6.1946 in the name of two trustees

for time being, that is, right from the date of purchase of the properties, the intention was to vest the properties in the trustees. u/s 2(a) of the

present Act, "committee" means the governing body of a registered society to whom the management of its affairs is entrusted, whereas Section 2

(g) defines, "officer" which includes trustees. Therefore, the concept of trustees is not alien under the New Act also. Balance of convenience is only

on the side of the defendants. When the Board is in existence for the past so many decades and it governs the affairs of the association, the

injunction sought for cannot be granted only at the stage of final disposal of the case and not at the interlocutory stage.

9. Further, the counsel for the defendant, Mr. Mohan Parasaran argued that when the plaintiff questions the validity of the bye-laws, as it is against

the Act and Rules, the responsibility of seeing that whether the bye-laws are in conformity with the Act and Rules are vested in the Registrar of

Societies. But, in this case, the Registrar of Societies has not been impleaded as parties. Therefore, the suit as well as applications are liable to be

dismissed for non-joinder of necessary parties. Further, there is no express provision prohibiting the office of treasurer under the new Act, the post

of Treasurer was in existence even prior to the commencement of this Act and as it is not violative of the present Act, it cannot be said to be

invalid. Therefore, interim injunction granted in Application No. 556 of 2001 cannot be extended and hence, status quo ante may be restored. Non-

impleading of the Registrar, initially is only to avoid giving statutory notice u/s 80 CPC. Therefore, the plaintiff cannot be allowed to take advantage of his own conduct.

10. Mr. R. Krishnaoorthy, learned senior counsel appearing for the other defendant submitted that none of the provisions of the Societies Act has been violated whether the bye-laws are violative of the Act and the Rules, it is to be decided only at the final stage after the trial, but at the interlocutory stage, these aspects cannot be gone into. Further, bye-laws 35(d), the powers of the Trustees are made subject to the provisions of the Act and Rules. Under bye-laws 36(a)(V), Executive Committee is entitled to appoint trustees in the case of vacancies in the Office of Trustees.

Therefore, none of the provisions of the bye-laws can be said to be violative of or in contradiction of any of the provisions of the Act and the Rules made thereunder. Therefore, the plaintiff is not entitled to get the relief and hence the applications are liable to be dismissed. As stated above, the only question before this Court is whether,

(i) the prayer in Application No. 556 of 2001 is for an injunction restraining the respondent/defendant society from, in any way, filling up the vacancies of the trustees arising on the retirement of the three trustees from the Trust Board, namely Mr. R. Ramakrishnan, Mr. S. Ramasami and Mr. N. Kumar, retiring on 8.7.2001, 25.8.2001 and 30.9.2001 respectively.

(ii) The prayer in Application No. 2890 of 2001 is to direct the defendants to appoint trustees from among the 23 elected office-bearers elected in the Annual General Body Meeting.

11. Placing these two prayers in juxtaposition, it is seen that they are mutually contradictory. In one application, the prayer is to injunct any appointment of trustees and not to fill up the vacancies of the trustees, because there cannot be a Trust Deed, whereas the other application is to direct the defendants to appoint trustees from among the 23 elected office-bearers elected in the Annual General Body Meeting, Further, the counsel for the plaintiff argued that the trustees are not recognized under the Act and Trustees cannot hold office after the commencement of the Act. A perusal of the Act reveals that the word, "trustees" is used in Section 2(g) of the Act. The word, "officer" has been defined as including the trustees, director, members of the committee etc. Rules 6(1)(h) and (i) also refer

to "" officer"". As per Section 18, all the properties of the society, if not vested in trustees, shall vest in the committee. Therefore, the trustees are not antithetic to the Act. The existence of trustees is recognized and can be continued even after the commencement of the new Act. A reading of Section 18 reveals that a property of the society if vested in the trustees on the commencement of the Act, 1975 will continue to be vested only in the trustees. Therefore, the office of trustees is not ultra vires or not unknown or not unrecognized by the new Act. Therefore, the office of trustees can continue to exist even under the new Act. The main argument of the counsel for the plaintiff is that, as per the Bye-laws, the powers of Trust Board are superior to that of the executive committee. The Executive Committee shall exercise only certain powers. The ultimate power of governance is vested in the Board of trustees. Under the Act, such a power cannot be vested in the trustees or be exercised by the trustees, such a provision is ultra vires the Act.; According to clause 35(d) of the bye-laws,

Subject to the relevant provisions of the Tamil Nadu Societies Registration Act, 1975 and the rules thereunder the Board of Trustees shall have the power and authority.....

This provision makes it clear that the intention of the Society is that the Board of Trustees shall exercise its power only subject to the provisions of the Act and Rules, in other words, only in accordance with the provisions of the Act and Rules. Therefore, there is no power which is not in conformity with the Act and Rules that can be exercised by the Board of Trustees. It is not stated in the affidavit any particular Act by the Board of trustees, contrary to the Act or Rules, Therefore, the argument that the Trust Board exercised the powers contrary to the Act and Rules is unfounded.

12. The argument of the learned counsel for the plaintiff that the Trust Board consists of nominated members and therefore, it cannot exercise control over the Executive Committee which is an elected body. Clauses 35 and 36 deal with powers and functions of the Board of trustees.

According to Clause 35(b)(i), Board of Trustees shall appoint one among themselves as the Executive Trustee. Clause 36(a)(i) stipulates that apart from the ex-officio trustees, the Board of trustees shall consist of not less than

five and not more than nine members. Clause 36(a)(ii) provides that the president and the secretaries for the time being of the Academy shall be Ex-Officio Trustees during the period of their office. Clause 36(a)(iii) provides that in addition to the ex-officio trustees under the sub-clause (ii) above, the Executive Committee shall be entitled to appoint from time to time trustees subject to subclause (i) above from among the members of the academy. The argument of the learned counsel for the plaintiff is that these appointment of the trustees should be confined only to the members of the Executive Committee; The Executive Committee shall not elect any person who is not a member of the Committee even though he is a member of the Academy/ Association. The argument of the counsel for the plaintiff has no force because the bye-laws are framed and approved by the General Body. Any society can adopt its own rules for its governance to suit its needs. No other authority can impose their views into the bye-laws as to the manner in which a particular officer shall be elected. A

Division Bench of this Court in the case Chennai Kanchi Tiruvelore District Film Distributor Association v Chinthamani S. Murugesan reported in

2001 (3) CTC 349= 2001-3-L.W. 514, held as follows:

A voluntary association is entitled to carry on its affairs in accordance with its own rules. A person becoming member of such a body contracts to be bound by those rules and by the actions taken by those in whom power is vested under the Rules.

Therefore, it is the will of the society to have its own rules. No other authority can command the society to alter the rules against their will.

13. Section 2(a) of the Act reads as follows:

committee"" means the governing body of a registered society to whom the management of its affairs is entrusted.

So, the Committee does not mean only the Executive Committee under the Act, but it means the Governing Body to whom the management of the affairs is entrusted. Section 15 reads that,

Every registered society shall have a committee not less than three members to manage its affairs.

The word ""a committee"" does not mean that there can be only one committee. Governing Body can consist of more than one committee, Executive

Committee and any other committee called by any other name. Therefore, the

Board of trustees can also be a Governing Body. It is the settled

Principle that "" singular includes plural"". Therefore, "" a committee"" does not mean "" only one committee."" Section 8 of the Act confers powers to

make bye-laws. As per rule 6, the bye-laws shall contain provisions in respect of the following matters, namely

h) the name of the person or officer, if any, authorised to sue or to be sued on behalf of the society;

i) the name of the person or officer who is empowered to give directions in regard to the business of the society;

m) the manner in which the society shall transact its business.

As per Rule 6(2) the bye-laws may also provide the manner in which the society shall function as deemed necessary the names of the officer who

is empowered to give direction in regard to the business of the society may also be that and therefore, the bye-laws can provide for all these

aspects, as the society wanted. Therefore, the bye-laws are framed as wanted and as deemed necessary by the Association. Those bye-laws

would be invalid and unenforceable only if they violate the Act or Rules. Further Section 55 of the Act provides that,

No act or proceeding of a registered society or any committee or of any officer of the society shall be deemed to be invalid merely on the ground,

a) of any vacancy or defect in the organization of the society or the formation of the general body or the constitution of the Committee;

b) of any defect or irregularity in the election or appointment of a member of the committee or an officer of the society.

Therefore, any irregularity in the constitution of the Committee or the organization or appointment of the officer which term includes trustees will not

invalidate the acts of the society.

14. Therefore, a combined reading of all these provisions would go to show that the Committee which means the Governing Body of the

Association to which the management of the Committee is entrusted need not necessarily be confined to only one Committee. Therefore, there can

be an Executive Committee and also a Board of Trustees under the Act. Further, it is to be seen that as per the bye-laws, Executive Committee

consists of one President, not more than six Vice-presidents not more than four Secretaries, twelve other members and all the trustees forming

members of the Board of trustees. As stated earlier, the Trustees are elected by the Executive Committee under bye-law 36(a) (V). Under the Act, the members of the Committee shall be appointed at a meeting of the society by a Resolution as per Section 15(3) and the trustees are presently appointed by the Executive Committee under bye-law 36 from the members of the Academy. It is not correct to say that they are merely nominated by any person or authority. Therefore, the argument of the counsel that the trustees are nominated has no basis.

15. Presently in these application, the question whether the Board of Trustees can also be considered as the Governing Body or not is not decided, because it is not necessary for the disposal of the two applications. Therefore, whether the term of office of a Trustee can be six years is not also decided. That can be decided only in the suit,

16. In view of the above position, the prayer that no person can be appointed as Trustees cannot be granted. Hence, Application No. 556 of 2001 is dismissed.

17. In view of the fact that as per the bye-laws the trustees are appointed from the members of the Association, as that bye-law cannot be said to be violative of the Act or Rules, the prayer in Application No. 2890 of 2001 that such trustee shall be appointed only from among the members of the Executive Committee cannot be granted. Hence, this application is dismissed. For all the reasons stated already, the Trust Board is not antithetic to the Act. No injunction can be granted as prayed for. Hence, O.A. No. 556 of 2001 is dismissed. Application No. 2890 of 2001 is also dismissed.