
(1987) 04 MAD CK 0017

In the Madras High Court

Case No : Writ Petn No's. 93, 3427 of 1979 and 12371 of 1984

Periyar Self-Respect Propaganda Institution, Trichy and Others APPELLANT
Vs
State of Tamil Nadu and Others RESPONDENT

Date of Decision : 08-04-1987

Acts Referred:

Constitution of India, 1950 — Article 19(I)
Societies Registration Act, 1860 — Section 1, 15
Tamil Nadu Societies Registration Act, 1975 — Section 15(3), 15(4), 26(4)

Citation : AIR 1988 Mad 27

Hon'ble Judges : Ainar Sundaram, J

Bench : Single Bench

Advocate : K.K. Venugopal, for S. Doraisami, for the Appellant; R. Krishnamoorthy, General and E.H.B. David, for the Respondent

Judgement

1. In these three writ petitions, the challenge is of the constitutional vires of the provisions of Tamil Nadu Societies Registration Act 27 of 1975,

hereinafter referred to as the Tamil Nadu Act 27 of 19175. The petitioner-in W.P. No. 92 of 1979 is the Periyar Self-Respect Propaganda

Institution, Tiruchirappali, hereinafter referred to as the Institution, represented by its Life Secretary K. Veeramani. This Institution is a Society

already registered under the Societies Registration, Act 21 of 1860, hereinafter referred to as Act 21 of 1860. The petitioner in W.P. No. 3427 of

1979 is the Periyar Maniammal Educational and Charitable Society, hereinafter referred to as the Charitable Society, represented by its life

President K. Veeramani. The Charitable Society is also one already registered under Act 21 of 1860. The petitioner in W. P. No. 12371 of 1984

is a life member of the Institution.

2. The petitioners express a grievance that by the enactment and enforcement of

Tamil Nadu Act 27 of 1975, the fundamental rights guaranteed to them under Art. 19(1)(c) and (f) stand violated. According to them, under the provisions of Act 21 of 1860 the Institution and the Charitable Society got formed and constituted with specified objectives and with persons of involvement and commitment to the said objectives and both the Institution and the Charitable Society formulated memoranda of Association and rules, adumbrating the rights and privileges; interests and obligations of its constituents and the method and manner of their functioning and by the Tamil Nadu Act 27 of 1975, their right to continue the Associations as they stood formed and functioning under Act 21 of 1860 has been violated and transgressed, in that both the Institution and the Charitable Society are prevented from continuing their associations and functioning as such in the manner and the method by which they got constituted earlier. This is the essence of the submission made by Mr. K. K. Venugopal, learned counsel appearing for the petitioners with reference to violation of Art. 19(1)(c). Coming to Art. 19(1)(f), it is contended on behalf of the petitioners that by the Rules governing the Institution and the Charitable Society, properties have come to vest in their life office bearers who alone have the right of management and administration of the properties and the provisions of Tamil Nadu Act 27 of 1975 have done away with the vesting of and administration of such properties in and by such office bearers and have disintegrated such vesting or in other words divested the vesting already done since the very provisions of Tamil Nadu Act 27 of 1975 discountenance life membership, life presidentship and life secretaryship. It must be remembered that Art. 19(1)(f) was there at the time when Tamil Nadu Act 27 of 1975 was brought into effect or brought into force on 22-4-1978. Art. 19(1)(f) was deleted only by the 44th Amendment with effect from 20-6-1979. Hence, Art. 19(1)(f) was there at that time when Tamil Nadu Act 27 of 1975 came into force and certainly the complaint that Art. 19(1)(f) was violated has to be investigated and shall not be brushed aside at the threshold itself on the ground that Art. 19(1)(f) is not in the Constitution as on date.

3. To impress upon the Court that the Tamil Nadu Act 27 of 1975 has made inroads into the fundamental rights guaranteed under Art. 19(c) and

(f), Mr. K. K. Venugopal, learned counsel appearing for the petitioners, drew a comparison between the provisions of Act 21 of 1860, under

which the Institution and the Charitable Society stood registered and the provisions of Tamil Nadu Act 27 of 1975. So I of Act 21 of 1860

contemplated for formation and registration of societies by any seven or more persons associated for any literary or charitable purpose or for any

such purpose as is described in S. 20 by subscribing their names to a memorandum of association, and filing the same with the Registrar of Joint

Stock Companies. On such registration, the association did not become a corporate body. In this behalf, a ruling of the Supreme Court in Board

of Trustees v. State of Delhi, AIR 1622 SC 458 was referred to. It is contended that Act 21 of 1860 did not lay any restriction with regard to

composition, tenure, letter of appointment and the bye-laws and the rules to be chalked out by the persons forming the association and getting

themselves registered and the decision was left to such persons alone without curtailment of any liberty in this behalf. S. 2 merely stated -that the

memorandum of association should contain the following things :

(1) The name of the Society

(2) The objects of the Society

(3) The names, addresses and occupations of the governors, council, directors, committee, or other governing body to whom, by the rules of the

society, the management of its affairs is entrusted.

That section further required that a copy of the rules and regulations certified to be correct copy by not less than three of the members of the

Committee shall be filed with the memorandum of association. S. 5 stated that

the property, moveable 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 the Society. Section 16 defined the governing body as constituted of the governors, council, directors,

committee, trustees or other governing body to whom, by the rules and regulations of the society, the management of its affairs was entrusted

Under S. 17, societies formed before the Act 21 of 1860 were given the option to have themselves registered under it and there was no element of

compulsion. The formality of registration was also simple under S. 18 in that it required the governing body to file with the Registrar of Joint Stock

Companies a memorandum showing the name of the society, the objects of the society and the names, addresses and occupations of the governing body together with a copy of the rules and regulations of the society certified as provided in S. 2 and a copy of the report of the proceedings of the general meeting at which the registration was resolved on. According to the learned counsel for the petitioners, the provisions of Act 21 of 1860 did not impose any restriction on or in any manner curtail the freedom of association and both the Institution and the Charitable Society got themselves constituted and registered under the liberal provisions of Act 21 of 1860, and their rules and regulations conferred and secured to their members certain rights relating to their composition and functioning.

4. Coming to Tamil Nadu Act 27 of 1975, it was pointed out that Chapter 11 thereof contains the provisions regarding constitution and registration of societies and while S. 3 therein speaks about the societies which may be registered. S. 4 speaks about the societies, which are to be compulsorily registered and S. 5 speaks about optional registration of certain societies. Chapter III speaks about the management and administration of Societies. Offence is taken to S. 15 and in particular to sub-ss. (3) and (4) thereof when they lay down the election process to be gone through to become a member of the Committee and further circumscribe the tenure of office of the membership of the Committee of the Society. S. 15(3) says that the members of the Committee shall be appointed at the meeting of the Society by a resolution of the majority of the members present and entitled to vote directly and S. 15(4) says that the term of the office of the members of the society shall not exceed three years from the date of their appointment. S. 18 lays down that all property moveable and immovable belonging to a registered society whether acquired before or after its registration if not vested in trustees shall vest in the Committee. S. 26 relates to annual general meetings and sub-s. (4) thereof states that the Registrar may nominate an officer subordinate to him to be present at any such general meeting. Chapter IV sets out the provisions relating to inspection, enquiry, cancellation, winding up and appeal. S. 36 gives the power to the Registrar to enquire into the affairs of the registered society. S. 37 gives the power to the Registrar to cancel the

registration on fulfilment of the contingencies specified therein. S. 38 empowers the Registrar to cancel the registration of a society carrying on unlawful activities. S. 39 sets down the effect of cancellation of registration by stating that such society shall forthwith cease to carry on its business except so far as may be required for the beneficial winding up thereof for which purpose it shall pass a special resolution and dissolve itself in the manner provided in S. 41. S. 40 empowers the Registrar to appoint a liquidator when the registration of a registered society is cancelled. S. 42 lays down that on dissolution, no member is to receive any share in the profit left over, after satisfaction of the debts and liabilities and it says that it shall be given to some other registered society having the same objects " or similar objects. S. 53 found in Chapter V11 states that a society registered under Act 21 of 1860 shall be deemed to be registered under Tamil Nadu Act 27 of 1975 and further the bye-laws of such society shall, in so far they are not inconsistent with any provisions of Tamil Nadu Act 27 of 1975, continue in force until altered or rescinded. S. 57 speaks about the repeal of Act 21 of 1860 as well as any law corresponding to Tamil Nadu Act 27 of 1975 in force in the transferred territory including the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act 1955 Sub-section (4) of S. 57 states that the repeal under subs. (3) shall not affect the previous operation of the corresponding law or the rights, ,privileges and obligations accrued and incurred under the corresponding law.

5. After a summary advertence to the provisions of Act 21 of 1860 and Tamil Nadu Act 27 of 19,75 to bring out the comparative "difference between the two, the learned counsel for the petitioner was in concentration more on the provisions of S. 15(3) and (4) and S. 26(4). It is only with reference to these provisions, the grievance of both the Institution and the Charitable Society directly arises. S. 53 of the Tamil Nadu Act 27 of 1975 has left with no other alternative but to have a society registered under Act 21 of 1860 to" come within the purview of Tamil Nadu Act 27 of 1975, since it says that every society registered under Act 21 of 1860 shall be deemed to be registered under Tamil Nadu Act 27 of 1975 and further the bye-laws of such society could have survival only so far as they are not inconsistent with the provisions of Tamil Nadu Act 27 of 1975.

When an inconsistency arises, the provisions of Tamil Nadu Act 27 of 1975 alone should govern. If we turn to the Memorandum and Articles of

Association of the Institution, we find that there were five life members of the Executive Committee of the Institution; Periyar E. V. Ramasamy as

life-president; T. P. Vedbachalam as vice-president Mrs.E. V. R. Mani as life-secretary, Mr. A. N. Narasimhan and Mr. R. Thirunavukkarasu.

Clause 3 of the Memorandum of Association contemplates these five persons functioning as life members for life or till resignation. Rule 11 of the

Rules and Regulations says that -the management of the affairs of the Institution shall be vested, in an Executive Committee consisting of not less

than thirteen and not more than fifteen members, including a President, a Vice-President and a Secretary. Rule 12 contemplates that of the total

members of the Executive Committee, five will be life members; three will be members elected by the life members and there it will be elected by the

general body of the Institution. Rule 13 lays down that life members of the Executive Committee shall hold office for their life time. Rule 14 enabled

E. V. Ramaswamy and Mrs. E. V. R. Mani to nominate any person to succeed to their places in the Executive Committee. Rule 15 says that if

there is any vacancy by death, resignation or failure to nominate their successors by the life members of the Executive Committee, the place shall

be filled up by the other life members. Rule 20 says that there shall be a president, one vicepresident and a Secretary, who shall be elected from

the life members of the Executive Committee by themselves. Rules 21, 22-and 23 required extraction as follows

21. Among the Life-members of the Executive Committee, No.- 1, Periyar E. V. Ramaswamy shall be President and No. 3 Mrs E.V. R. Mani

shall be the Secretary of the Executive Committee and they shall hold their office for life or till resignation and shall have powers to nominate any of

the Life members to succeed them as President or Secretary as the case may be, after which these offices will be filled up by election as indicated

in Rule No. 20.

22. The Life-members of the Executive Committee alone shall be the trustees of the properties already purchased by Periyar E. V. Ramaswamy

President of the Institution, in his name as President of the Self-Respect Association and in his personal name, for the Self-Respect Association out

of its funds and also the properties already purchased by Life members of the Executive Committee of the Institution (1) Mrs. E. V. R. Mani (2)

Mr. T. P. Vedachalam (3) Mr. A. N. Narasimhan and (4) Mr. E. Thirunavukkarasu on behalf of the Dravida Self-Respect Institution and the

properties to be acquired hereafter for the Institution.

23. The properties of the Institution shall be in the names of the President and the Secretary and they shall have power to purchase and sell

properties on behalf of the Institution and the properties should be in charge of and in custody of the Secretary.

6. Coming to the Charitable Society, a copy of its-Memorandum of Association and Rules has been placed before this Court. The Charitable

Society has a Board of Management and the Rules governing the Charitable Society on the question of the constitution of the Board of

Management and the tenure of its office bearers and its properties are relevant and Rules 12, 13, 14, 23, 25 and 28 require extraction as follows

12. Board of Management: - The Board of Management of the Society shall consist of the President, the Secretary-cum-Treasurer and not more

than three members elected by the Electoral College composed of Special Members, provided the Board of Management shall have power to act

notwithstanding any vacancy in the Membership.

13. The term of the Board of Management:- The term of the members of the Board of Management other than the first President and the first

Secretary-cum Treasurer shall be three years.

14. The first President and the first "Secretaty-cum-Treasurer shall be members the Board of Management for life subject of the to the provisions

of Rule 23, the second and subsequent President" and Secretary-cum Treasurer shall hold office for, a period of three years..

23. The President: - The first President of the Society, namely, Thirumathi E. V. R. Maniammai, shall hold office for her life, unless she sooner

resigns. In the event of any vacancy in the office of the President, after the first President, the first Secretary-cumTreasurer if he so elects, shall hold

office as President, after the first President. The first Secretary-cum-Treasurer, if he so elects, shall hold office as President for life. The subsequent

President shall be elected by the members of the Board of Management from among themselves and they shall hold office for a period of three

years.

25. The Secretarr-cum-Treasurer:

The first Secretary-cum-Treasurer shall hold office for life unless he sooner resigns from the office. The second and subsequent Secretary-cum-

Treasurer shall be elected by the Board of Management from among themselves in accordance with the bye-laws and he shall hold office for a

period of three years.

28. Properties All the properties moveable and immovable of the Society shall vest in and shall be held by the President in trust of the society.

7. Neither the life President nor the life Secretary of the Institution, namely, Periyar E. V. Ramaswamy nor Mrs. E. V. R. Mani was alive on the

date when the Tamil Nadu Act 27 of 1975 came into force., It is stated that Periyar E. V. Ramaswamy died on 24-12-1973 and Mrs. E. V. R.

Mani died on 18-3-1978 The Tamil Nadu Act 27 of 1975 came into force on 22-3-1978. It is stated that Periyar E. V. Ramaswamy died without

nominating a successor for life-Presidentship and after his death Mr. K. Veeramani, who represents the Institution as its life-Secretary in W. P.

No. 93 of 1979, was elected as a life member and as well as life-President by other life members. The further statement is that Mrs. E. V. R. Mani

nominated Mr. K. Veeramani to succeed her as life-Secretary and on the death of Mrs. E. V. R. Mani on 18-3-1978, Mr. K. Veeramani

relinquished his office as life-President and became life-Secretary and continues as such as on date. With regard to life-Presidentship" it is stated

that Mr. R. Shanmuganathan, an ordinary member of the general body was elected as life-member and he was also elected as life-president and he

continues as life-President as on date. With regard to the Charitable Society, which is being represented by its life-President, Mr. K. Veeramani,

the first President Mrs. E. V. R. Mani is no more and the present life President, who had earlier held office as the first Secretary- cum-Treasurer

has come to the office of the life-President as per rule 23 extracted above.

8. With the above factual background, the anxiety and grievance are being expressed with regard to the disturbances to the life Officers that should

necessarily follow if S. 15(3) and (4) of Tamil Nadu Act 27 of 1975 is to be applied to the Institution and the Charitable Society. The life offices

cannot fit in with the said provisions. If S. 15(3) and (4) have to apply, the office

of any member of the Committee cannot ensure-beyond a period of three years and thereafter the election process has necessarily got to be adopted. S. 26(4) of Tamil Nadu Act 27 of 1975 would enable the Registrar to depute an officer to be present at the general meetings of the Institution and the Charitable Society. This is not being relished by both and the stand expressed is that implementation of this provision would tantamount to a stranger peeping into the affairs of the Institution and the Charitable Society and doing surveillance of their affairs and by that, their independence of functioning to the exclusion of outsiders will be taken away. It is only in this context, it is claimed that Art. 19(1)(c) stands violated, since the Institution and the Charitable Society, which were formed as Associations with particular set ups and with particular manner of functioning are not being allowed to continue with the same set, up and to function in the same manner.

9. The contention with regard to Art. 19(1)(f) is being raised inter linking the same with the contention regarding Art. 19(1)(c). As we saw from the rules, governing the Institution, it is only the life members who shall be the trustees of the properties of the Institution. There shall be five life members and the power of nomination of successors was given only to Periyar E. V. Ramaswamy and Mrs.- E. V. R. Mani. They alone had the powers to nominate their successors to the offices of the President and the Secretary. This power of nomination is not available to other life members and if there is a vacancy by death or resignation in the offices of the other life members, the place shall be filled up by other life members.

With regard to the Charitable Society, its properties, movable and immovable vest in its President. The present incumbent in the office of the President is a life president. The case of the Charitable Society is also put forth more or less from, the same angle as the case of the Institution. If life membership or office is to be put an end to, by virtue of the application of S. 15(3) and (4) of Tamil Nadu Act 27 of 1975, then the vesting of the properties in the trustees or the life president could not survive and the vesting will be only in the Committee as we could see from S. 18 thereof. It is claimed that the life members who are trustees or life President by virtue of their being such derive the right to hold property within the meaning of Art. 19(1)(f) and this is being put an end to by Tamil Nadu Act 27 of

1975. It is also contended that the provisions of Tamil Nadu Act

27 of 1975 cannot fall within the restrictive Legislation saved under Art. 19(4) with reference to Art. 19(1)(c) and 19(5) with reference to Art.

19(1)(f). It is submitted that Tamil Nadu Act 27 of 1975 is not a law imposing reasonable restriction in the interests of the sovereignty and integrity

of India or public order or morality within the meaning of Art. 19(4) and equally so it cannot be stated to be a law imposing reasonable restriction

in the interests of the general public or for the protection of the interests of any scheduled tribe.

10. The answer to the above contentions on behalf of the State given by Mr. R. Krishnamoorthy, learned Advocate General appearing for it, is

that this complaint presupposes that the right of a person to be a life member and by virtue of that a life trustee would be fundamental right

guaranteed either by Art. 19(1)(c) or Art. 19(1)(f). The learned Advocate-General would submit that such a right is not an integral part of the right

to form an association. It is not a fundamental right and if at all, it could be a peripheral or concomitant right to the fundamental right to form an

association and to hold property. These rights cannot be levelled to the status of fundamental rights guaranteed under the Constitution. The right to

be a life member and for that matter a life trustee cannot be said to be an integral part of the right to form an association or to hold property, having

the basic characteristics of a fundamental right. According to the learned AdvocateGeneral, Ss. 15(3) and (4) of Tamil Nadu Act 27 of 1975 have

not in any way disturbed the right to form an association or to continue the same either with regard to the Institution or with regard to the

Charitable Society, but they may have an impact on the manner of their administration.

11. There was also a supplementary attack put forth by the learned counsel for the petitioners that in any event Ss. 15(3) and (4) must be held to

be only prospective in operation and not retrospective in operation, to disturb, take away and abrogate the rights already accrued and privileges

conferred. This plea has not been specifically taken in the pleadings before the Court. Yet, submissions were made by the learned Counsel for the

petitioners as arising out of admitted facts as a point of law. This submission has also been met by the teamed Advocate- General appearing for the

State. I shall deal with it, after the matter has been dealt with from the angle of Arts. 19(1)(c) and 19(1)(f).

12. There cannot be any dispute so far as the right guaranteed under Art. 19(1)(c) is concerned, it squarely covers the right to form an association.

But with regard to the activities of the association or the steps which it may take to manifest its activities or its objectives, there could certainly be

laws governing the same and their validity has got to be tested not by reference to the criteria to be found in Art. 19(4), but by finding out as to

whether these activities or steps taken partake the character of the fundamental right to form an association. The learned Advocate-General

appearing for the State would submit that the right to be a life member and by that a life trustee cannot fall within the ambit of the right to form an

association. As to what exactly is a fundamental right the breach of which one could complain, has been the subject-matter of review in Mrs.

Maneka Gandhi Vs. Union of India (UOI) and Another, . It has been observed that what is necessary to be seen is, and that is the test which must

be applied whether the right claimed by the petitioner is an integral part of a named fundamental right or partakes of the same basic nature or

character as the named fundamental right, so that the exercise of such right is in reality and substance nothing but an instance of the exercise of the

named fundamental right. If, on the other hand, the right claimed- is only peripheral or concomitant, one cannot complain of violation of the same as

coming within the meaning of violation of a fundamental right.

13. To appreciate the contentions and the counter-contentions which I heard with reference to Art. 19(1)(c), I feel obliged to refer to some of the

case law on the subject In All India Bank Employees' Association Vs. National Industrial Tribunal and Others, , the validity of S. 34-A of the

Banking Companies Act was, put in issue. According to the said provision, the Banking company cannot be compelled to disclose either the

quantum of its secret reserves or the nature, or the provision made for "bad and doubtful debts and for other reasonable and necessary provision in

proceedings under the Industrial Disputes Act, 1947. It was the contention of the workmen that an Industrial Tribunal had the right in law to

compel the banking company to disclose their secret reserves, etc. in the proceedings under the Industrial Disputes Act, 1947. and that the said

provision contravened the fundamental right guaranteed to trade unions by sub-cl. (c) of Cl. (1) of Art. 19. There was also another contention

raised that the said provision violated the right to equality before law guaranteed under Art. 14, The Supreme Court pointed out that Art. 19 as

contrasted with certain other Articles like Arts. 26, 29 and 30, grants rights to the citizen as such, and associations can lay claim to the fundamental

rights guaranteed by that Article solely on article basis of their being an aggregation of citizens, i.e. in right of the citizens composing the body, and as

a stream can rise no higher than the source, associations of citizens or claim freedom from restrictions to which the citizens composing it are

subject. It was further pointed out as follows

In our opinion, the right guaranteed under -sub-cl. (c) of cl. (1) of Art 19 extends to the formation of an association and in so far as the activities

of the association are concerned or as regards, the steps which the union might take to achieve the purpose of its creation, they are subject to such

laws as might be framed and that the validity of such laws is not to be tested by reference to the criteria to be found in cl. (4) of Art. 19 of the

Constitution.

An important point formulated for discussion in the pronouncement of the Supreme Court ran as follows :

When sub-cl. (c) of Cl. (1) of Art. 19 guarantees the right to form associations, is a guarantee also implied that the fulfillment of every object of an

association so formed is = a protected right, with the result that a there is a constitutional guarantee that every association shall effectively achieve

the purpose for which it was formed without interference by law except on grounds relevant to the preservation of public order or morality set out

in cl. (4) of Art. 19.

The Supreme Court clearly opined that this point has got to be answered in the negative and an affirmative answer would be contradictory of the

scheme underlying the text and the frame of the several fundamental rights which are guaranteed by Part III and particularly by the scheme of the

seven freedoms or groups of freedoms guaranteed by sub-cl. (a) to (g) of cl. (1) of Art. 19.

14. In *Raghubar Dayal v. Union of India*, AIR 1952 SC 263 the vires of Forward Contracts (Regulation) Act 1952, was put in issue from the

angle of Art. 19(1)(c). There were provisions in that statute with regard the recognition of associations and the validity of those provisions was challenged. While, upholding the validity of the said statute it was observed as follows : -

We consider this argument is without force. in the first place, the restriction imposed by S. 6 of the Act is for the purpose of recognition and no association is compelled to apply to the government for recognition under that Act. An application for the recognition of the association for the purpose of functioning under the enactment is a voluntary act on the part of the association and if the statute imposes conditions subject to which alone recognition could be accorded or continued, it is a little difficult to see how the freedom to form the association is affected unless, of course, that freedom implies or involves a guaranteed right to recognition also. Could it be contended that there is a right in the association guaranteed by the Constitution to obtain recognition?

15. In Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others, the provisions of Hindi Sahitya Sammelan Act, 1962, were asked as violative of Art. 19(1)(b). The said Act did not merely regulate the administration of the affairs of the original society, but what it did was to alter the composition of the society itself, and the result of this change in composition was that the members who voluntarily formed the association were compelled to act in that association with other members who had been imposed as members by the Act and in whose admission to membership they had no say. The Supreme Court held that such alteration in the composition of the association itself clearly interfered with the right to continue to function as members of the association which was voluntarily formed by the original founders and, therefore, the Act violated the right of the original members of the Society to form an association guaranteed under" Art. 19(1)(c).

16. The discussion in paragraph 6 of the pronouncement of the Supreme Court is elucidative and requires extraction as follows :

It was argued that the right guaranteed by Art. 19(1)(c) is only- to form an association and, consequently, any regulation of the affairs of the Association, after it has been formed, will not amount to a breach of that right. It is true that it has been held by this Court that, after an Association

has been formed and the right under Art. 19(1)(c) has been exercised by the members forming it, they have no right to claim that its activities must also be permitted to be carried on in the manner they desire. Those cases, are, however, inapplicable to the present case. The Act does not merely regulate the administration of the affairs of the Society. What it does is to alter the composition of the Society itself as we have indicated above.

The result of this change in composition is that the members, who voluntarily formed the Association, are now compelled to act in that Association with other members who have been imposed as members by the Act and in whose admission to membership they had no say. Such alteration in the composition of the Association itself clearly interferes with the right to continue to function as members of the Association which was voluntarily formed by the original founders. The right to continue to function as members of the association which was voluntarily formed by the original founders. The right to form an association, in our opinion, necessarily implies that the persons forming the Association have also the right to continue to be associated with only those whom they voluntarily admit in the Association. Any law, by which members are introduced in the voluntary Association without any option being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association. If we were to accept the submission that the right guaranteed by Art. 19(1)(c) is confined to the initial stage of forming an Association and does not protect the right to continue the Association with the membership either chosen by the founders or regulated by rules made by the Association itself, the right would be meaningless because, as soon as an association is formed, a law may be passed interfering with its composition, so that the Association formed may not be able to function at all. The right can be effective only if it is held to include within it the right to continue the Association with its composition as voluntarily agreed upon by the persons forming the Association. This aspect was recognised by this Court, though not in plain words, in the case of *O. K. O.K. Ghosh and Another Vs. E.X. Joseph*, . The Court, in that case, was considering the validity of Rule 4-B of the Central Civil Services (Conduct) Rules 1955, which laid down: "No Government servant shall join or

continue to be a member of any Service Association of

Government servants (a) which has not. Within a period of six months from its formation, obtained the recognition of the Government under the

Rules prescribed in that behalf, or (b) recognition in respect of which has been refused or withdrawn by the Government under the said Rules.

This Court held : -

"It is not disputed that the fundamental rights guaranteed by Art. 19 can be claimed by Government servants. Art. 33 which confers power on the

Parliament to modify the rights in their application to the Armed Forces, clearly brings out the fact that all citizens, including Government servants,

are entitled to claim the rights guaranteed by Art 19. Thus, the validity of the impugned rule has to be judged on the basis that the respondent and

his co-employees are entitled to form Associations or Unions. It is clear that Rule 4-B imposes a restriction on this right. It virtually compels a

Government servant to withdraw membership of the service Association of Government servants as soon as recognition accorded to the said

Association is withdrawn or if, after the Association is formed, no recognition is accorded to it within six months. In other words, the right to form

an Association is conditioned by the existence of the recognition of the said Association by the Government. If the Association obtains the

recognition and continues to enjoy it, Government servants can become members of the said Association, if the Association does not secure

recognition from the Government or recognition granted to it is withdrawn, Government servants must cease to be the members of the said

Association. That is the plain effect of the impugned rule." The Court in the above passage, thus, accepted the principle that the Government

servants, who may have formed as Association, could not be compelled to resign from it by imposition of a condition of recognition of this

Association by the Government and that, if the Government servants are required to cease to be members, that would be a violation of the right

under Art. 19(1)(c). The Court, of course, in that case, further proceeded to examine whether such a restriction on the right could be justified

under Art. 19(4) or not. That case, thus, supports our view that the right to form an Association, includes the right to its continuance and any law ,

altering the composition of the association compulsorily will be a breach of the

right to form the Association.

17. The Supreme Court in the above pronouncement referred to its earlier pronouncement in *State of Madras Vs. V.G. Row*, and observed that

the Court had also proceeded on the same basis and though this aspect was not clearly brought out in the judgment, the point, which came up for

consideration, was decided on the basis that persons forming an Association had a right under Art. 19(1)(c) to see that the composition of the

Association continues as voluntarily agreed to by them. *State of Madras Vs. V.G. Row*, was a decision given in an appeal from a judgment of this

Court in *V.G. Row Vs. The State of Madras*, and therein principle was clearly formulated by Rajamannar, C.J., in the following words.

The word "form" therefore, must refer not only to the initial commencement of the association, but also to the continuance of the association as

such.

Ultimately, the Supreme Court in *Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others*, held that the Hindi Sahitya Sammelan Act,

1962, in so far as it interfered with the composition of the Society in constituting the Sammelan, violated the right. of the original members of the

Society to form an association guaranteed under Art 19(1)(c).

18. In *Kaamareddy Suryanarayana and Another Vs. The District Co-operative Officer-cum-Election Officer, The West Godavari Co-operative*

Sugars Ltd. and Others, , Full Bench of the High Court of Andhra Pradesh considered the question as to whether the right to form a society under

the Andhra Pradesh (Andhra Area) Co-operative Societies Act 7 of 1964 has got anything to do with the fundamental right guaranteed under Art.

19(1)(c) of the Constitution. Apart from the Committee being a committee of the Co-operative Society registered under the Act, the restriction

imposed under S. 21-C of the Act on a person becoming a member of the Committee for more than two consecutive terms was held not to violate

the fundamental right to form association guaranteed under Art. 19(c) of the Constitution. It was opined that there was no restriction from forming

a co-operative society under the Act, or there is any compulsion to form a society under the Act or to become members of a society registered

under the Act Simply for the reason that, some restrictions are. imposed in connection with the working of the society, it was stated that it would

not amount to curtailing the freedom of forming a society unless the restriction goes to the very root of the matter, which amounts to taking away the freedom to form an association. In that case, the restriction was only to become a member of the Committee for a consecutive third term and that meant that one cannot be a member of the Committee for more than two terms continuously. There was no restriction on becoming a member of the Committee once again thereafter for two more years. These features Were held as not amounting to violation of Art. 19(1)(c) of the Constitution.

19. In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , to which reference has already been made in a preceding para, the scope of the fundamental right was set down in the following terms:

It would thus be seen that even if a right is not specifically named in Art. 19(1), it may still be a fundamental right covered by some clause of that

Article, if it is an integral part of a named fundamental right or partakes of the same basic nature and character as that fundamental right It is not

enough that a .right claimed by the petitioner flows or emanates-from -a named fundamental right or that its existence is necessary in order to make

the exercise of the named fundamental right meaningful and effective. Every activity which facilitates the exercise of a named fundamental right is

not necessarily comprhended in that fundamental right nor can it be regarded as such merely because it may not be possible otherwise to effectively

exerise that fundamental right. The contrary construction would lead to incongruous results and the entire scheme of Art. 19(1) which confers

different rights and sanctions different restrictions according to different standards depending upon the nature of the right will be upset. What is

necessary to be seen is, and that is the test which must be applied, whether the right claimed by the .petitioner is an integral part of a named

fundamental right or partakes of the same basic nature and character as the named fundamental right so that the exercise of such right is in reality

and substance nothing but an instance of the exercise of the named fundamental right Every activity that may be necessary for exercise of freedom

of speech and expression or that may facilitate such exercise or make it meaningful and effective cannot be elevated to the status of a fundamental

right as if it were part of the fundamental right of free speech and expression.

Otherwise, practically "every activity would become part of some fundamental right or 6e other and the object of making certain rights only as, fundament rights with different permissible restriction would be frustrated.

In the above pronouncement, the Supreme Court referred to its earlier pronouncement in All India Bank Employees" Association Vs. National Industrial Tribunal and Others, , to reiterate the proposition that the, right to form unions guaranteed under Art. 19(1)(c) does not carry with it the concomitant right that the unions so formed would be able to achieve the purpose for which they are brought into existence, so that any interference with such achievement by law to be unconstitutional, unless the same could be justified under Art 19(4).

20. Article 19 refers to what are known as natural and common law rights as distinguished from rights which are created by contract or statute, which rights must be exercised subject to the conditions imposed on them by the statute or the contract as the case may be. For instances, the right to stand asa candidate and contest an election is not a common law right and the fundamental right chapter has no bearing on this right created under the statute. (Vide Jumuna Prasad Mukhariya and Others Vs. Lachhi Ram and Others, .

21. When I view the grievance of the petitioners within the ambit of Art 19(1)(c), as expatiated by case law referred to above, their case specifically advanced before me by their learned counsel that both the institution and the Charitable Society must continue to have life offices, as secured to them under the rules governing them, - I must express - lacks legal foundation to support it. Could it be claimed that there is a fundamental right for a person to hold office in an institution or an association for life. Is such a right to be identified with the right to form an association, either on the part of the person concerned of the institution concerned? A plain reading of Art. 19(1)(c) leaves no room for any ambiguity in the mind of the Court that no one could claim that his right to hold office for life is an integral part of his fundamental right to form an Association. In the Institution, if the member himself could not claim such a right, the association, formed of such persons certainly cannot claim that to be its fundamental right. As pointed out by the Supreme Court in All India

Bank Employees" Association Vs. National Industrial Tribunal and

Others, as the stream can rise no higher than the source, associations of citizens cannot lay claim to rights not open to citizen. The mere fact that

earlier when the institution or the charitable society got constituted, such was the right bargained for, accepted and engrafted in the rules governing

them cannot elevate that right to that of a fundamental right guaranteed under Art. 19(1)(c). It is not a natural or common law right It is a right

conferred or created by the concerned rules formulated, might be, by the consensus of the persons forming the associations. By putting an end to

the life membership or life offices, there is. no putting an end to the right to form an association as such. The holding of an office for a particular

tenure or for that matter for life is a matter of internal arrangement amongst members constituting the Institution or the Charitable Society and

certainly it cannot assume the colour of a fundamental right. However laudable it may be to conceive of, execute and state the object of having the

founders or persons specified of the Institution and the Charitable Society to have the benefit of life offices and life membership, it is not possible to

characterise such rights or privileges conferred on. them as amounting to fundamental right to form an association By conferring upon these persons

the right to hold their office for life, there could have been and it could be stated that, in fact, there was an endeavour clearly manifested to achieve

and secure and effectuate effectively the objectives and purposes of the Institution and the Charitable Society. Thus, as pointed out by the

Supreme Court in All India Bank Employees" Association Vs. National Industrial Tribunal and Others, , the right to form associations guaranteed

under Art. 19(1)(c) does not carry with it a concomitant right that the association so, formed should be able to achieve the purpose for which they

are brought into existence. It could be a part of the scheme for the effective functioning of the institution and the Charitable Society for all times to

come. It could be the only method to secure the achievement of the objectives of the Institution and the Charitable Society. But, these rights and

privileges by themselves could not necessarily be. comprehended in the fundamental right to form association under Art. 19(1)(c) of the

Constitution. They are not integral parts of that named fundamental right to form an association, nor do they partake of the same basic nature and

character as that fundamental right. The internal constitution and the efficient functioning of the associations would have reference only to the achievement of their objectives. But, they have apparently nothing to do with the fundamental right to form an association under Art. 19(1)(c). As rightly contended by the learned Advocate General appearing for the State, neither the Institution nor the Charitable Society, nor the present incumbents of the life offices could claim that they could form associations only with the life offices engrafted in the rules, or if they had already formed, they must be allowed to continue to have that set up and" any disturbance thereof would amount to violation of the right to form an association guaranteed under Art. 19(1)(c). If at all, such a right could be characterised as a peripheral or concomitant right which may facilitate the fulfilment of the objectives of the founders of the Institution and the Charitable Society.. But, there is no constitutional guarantee that every association formed shall effectively achieve its objectives without interference by law. This is not a case where the composition of the association is being altered Neither the members nor the association of members could claim that they have a fundamental right to have office for life. In my view, this right claimed does - not satisfy the tests with regard to fundamental rights delineated by the Supreme Court in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, .

22. This takes me to the other question as to whether the petitioners could complain of violation of the fundamental right guaranteed under Art 19(1)(f) as it stood at the relevant point of time. That Article speaks about the right to acquire, hold and dispose of property. Both the Institution and the Charitable Society have rules governing their properties. Rules 22 and 23 of the Institution have been already extracted. Rule 22 says that the life members of the executive Committee alone shall be the trustees of the properties. Rule 23 says that the properties of the Institution shall be in the names of the president and the secretary and they shall have power to purchase and sell property on behalf of the Institution and the property should be in the charge of and in the custody of the Secretary. With regard to the Charitable Society, Rule 28 says that all the properties, movable and immovable of the Society, shall vest in and shall be held by the President in trust for the Society. The present incumbents in these offices are

holders of such offices or their lives. Assuming that any significance could be annexed to their life offices could it be still stated that by virtue of the rights which have come to be vested in them by the relevant rules with regard to the properties of the Institution and the Charitable Society, they do have the right to hold the property within the meaning of Art. 19(1)(f). The straight answer, which I could give is no. The reason is these persons have the role of trustees of the properties of the Institution and the Charitable Society. They have no, independent and individual vested right in those properties. What has been conferred on them is only the right of managing the properties. Such management may also include the power to sell or purchase the properties. But, still they cannot dissociate themselves from their rules as trustees of the properties and they have to manage the properties only for and on behalf of the Institution and the Charitable Society. In *Rev. Sidhrajibhai Sabbai v. State of Gujarat*, AIR 1963 SC 540, it was laid down that interference by State Government by an executive order with the right of bare management of an educational institution does not amount to infringement of the right to property under Art. 19(1)(f) and the word "property" in Art. 19(1)(f) must doubtlessly be extended to all those recognised types of interest which have the insignia or characteristics of proprietary rights, and it cannot be said that the Society maintaining the educational institution has any such right vested in it. Certainly, the present life office holders cannot claim that they have proprietary rights in the properties which they manage as trustees on behalf of the Institution and the Charitable Society. In *Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others*, it was pointed out that there can be no doubt that the right to have the custody of the - property such as the custodian has, or the right to manage the property such as the Manager possesses or the right to administer the trust property cannot be regarded as a right to property under Art. 19(1)(f).

23. In *S. Azeez Basha and Another Vs. Union of India (UOI)*, , the Supreme Court pointed out that Art. 19(1)(c) does not give any right to any citizen to manage any particular educational institution, and it only gives the right to a citizen to form associations or unions and Art. 19(1) does not give any right to any citizen to hold property vested in a corporate body like a university and all that it provides is that all citizens have the right

to acquire and hold and dispose of properties of their own. Though in the present case"" we are not dealing with a corporate body, we are dealing

with a case of trustees managing the trust properties and they do have no property right of their own.

24. In Kakinada Annadana Samajam, Vs. Commissioner of Hindu Religious and Charitable Endowments, Hyderabad and Others, , the question

arose as to whether the office of the hereditary trustee is property within the meaning of Art. 19(1)(f) or Art. 31. The answer was given in the

negative by pointing out that the hereditary trustees of institutions generally have only .3 bare right to manage and administer the secular estate: of

the institution or the endowment and they do not have proprietary or beneficial interest either: in corpus or in the usufruct of the estate. Here also as

per the scope of the rules governing the institution and the Charitable society that is the resultant position with reference to the holders of life officer

who are entrusted with the management of the properties as trustee thereof. The Associations as such are not being deprived of their properties.

Hence, I have to eschew this contention put forth on behalf of the petitioners that there is a violation of Art 19(1)(f) of the Constitution by the

introduction of the provisions of Tamil Nadu Act 27 of 1975.

25. It has already been noted that there is a complaint that S. 26(4) of the Tamil Nadu Act 27 of 1975 would also infringe the freedom of

association guaranteed under Art. 19(1)(c). Section 26(4) of Tamil Nadu Act 27 of 1975 states that the Registrar may nominate an officer

subordinate to him to be present at any of the general meetings of the Society The nominee comes there only as an observer. He is only an

observer. He is not given the right to participate in the proceedings. He is not given the right to vote. He is not given the right to interfere with the

proceedings of the meeting, or the right to call for any particulars. If these features are taken note of, the simple answer that this Court. could give

is that it would be a farfetched proposition to state that by S. 26(4) the right to form an association is violated. In The Gandhi Faiz-E-Am College,

Shahjahanpur Vs. University of Agra and Another, , the scope of the right to establish and administer educational . institutions conferred on the

minorities under Art. 30(f) of the Constitution came up for consideration There the University Statute required that the managing committee of the

minority educational institution shall include in it the principal of the college and the seniormost member of the teaching staff. The Supreme Court

held that such a provision is valid and it did not violate Art. 30(1) of the Constitution. However, (in behalf of the petitioners reliance -was placed

on a pronouncement of the Supreme Court of the United State in National Association for the Advancement of Colored People v. State of

Alabama, (19508) 2 Law ed 2d 1488, to state that the vital relationship between freedom to associate and privacy in one's association has been

recognised by Courts and inviolability of privacy in group association in ay in many circumstances be indispensable to preservation of freedom of

association. particularly where a group espouses dissident belief s. On going through the said pronouncement, I find that it was rendered on an

entirely different context and with reference to the question as to whether the concerned association could be compelled to disclose its membership

and certainly the said ruling does not have direct bearing on the present question in issue. By S. 26(4) of the Tamil Nadu Act_27 of 1975 it could

not be stated that there. was an infringement of the right to form, continue and function as association guaranteed by Art. 19(4)(c).

26. There is an attempt on the part of the learned counsel for the petitioners to get out of the clutches of S. 15(3) and (4) of the Tamil Nadu Act

27 of 1975 by advancing a theory that the said provisions must be held to be prospective in operation, in that they shall riot take away rights and

privileges acquired and conferred under the enactment repealed, namely, Act 21 of 1860, or in any event" affect anything done before the

commencement of the new enactment. In this connection, reliance was placed on S. 8 of the Tamil Nadu General, I Clauses Act, 1897 and in

particular on cls. (P) and (d) thereof. Clause (d) may not be security relevant for the simple reason. the right to hold an office for life is not a right

or a privilege acquired under or conferred by Act 21 of 1860. It could be stated to be a right acquired under or conferred by the rules governing

the Institution and the Charitable Society. Even though a statute should be applied prospectively, it should be stated that a statute is not applied

retrospectively because a part. of the requisites for its action drawn from a moment of time prior to its passing. 4 his is the view expressed by the

Supreme Court in Kapur Chand Jain Vs. B.S. Grewal and Others, , while dealing with the question as to whether the failure of a tenant to pay rent

prior to the coming into force of the concerned tenancy law would come within the mischief of the said law. The Supreme Court held that the

Tribunal. was right in considering the conduct of the tenant prior to the coming into force of the tenancy law while determining whether the tenant

was irregular in paying the rent The rule against retrospective construction is not applicable to a statute merely because a part of the requisites for

its action drawn from a time antecedent to its passing. If that were not so, every statute will be presumed to apply only to persons born and things

come into existence after its operation and the rule may well result in virtual nullification of most of the statute& In deciding the question of

applicability of a particular statute to past events, the language expressly used is no doubt the most important factor to be taken into account, but

that cannot be stated to be an inflexible rule. By the very effect of the new provision, the intention to put an end to old rights maybe evident. The

right to hold an, officer would have been earlier conferred under the "rules governing the Institution and the Charitable Society. But they have to be

put an end to because they come within the mischief of the provisions of Tamil Nadu Act 27 of 1975 and in particular S. 15(3) and (4) thereof. By

S. 15(4) of Tamil Nadu Act 27 of 1975, the rules conferring such life offices naturally must stand rescinded. It is claimed on behalf of the

petitioner"s that there is no contrary intention, that these rights already conferred should also stand abrogated, expressed anywhere in Tamil Nadu

Act 27 of 1975.

27. As to when and how a statute should be construed to take away the rights which have become vested or accrued came up for consideration

before a Bench of this Court in M. Varadaraja Pillai v. Salem Municipal Council, (1972) 85 Mad LW 760, and the following observations of the

Bench are worth noting

the Law is well settled that no statute should be construed as to take away the rights which have become vested or accured unless the language in

the statute is express or by necessary implication as plainly to require such a construction. Unless there is strong indication to the contrary the new

law ought to be construed so as not to interfere with vested and accrued rights. Even so, it is not an invariable rule that a statute could not be

retrospective unless so expressed in the very terms of the Section which has to

be construed but the question in each case is whether the Legislature has sufficiently expressed that intention. We must look to the general scope and purview of the statute and the remedy sought to be achieved, the former state of the law, the mischief or evil sought to be rectified, the benefits sought to be achieved for the benefit of the community or the public in general and such other relevant aspects in interpreting the provisions in the statute, while determining whether the presumption that no statute should be retrospective in operation has been clearly and satisfactorily rebutted.

The inference that a statute will have retrospective operation may rest. Upon unambiguous express provision to that effect in that statute itself or by necessary implication from the language employed in the light of the attendant and surrounding circumstances. The presumption against retrospective operation taking away vested rights would apply only if there is a vested right in the strict sense in order to raise the presumption, for, there is no presumption that an Act of Parliament is not intended to interfere with the existing rights.-

28. Though the language in S. 15(3) and (4) of Tamil Nadu Act 27 of 1975 is not expressed in its terms with regard to putting an end to life offices, if any, held in the Societies already functioning, the contrary intention is evident from the very scheme of the concerned provisions. after coming into force of Tamil Nadu Act 27 of 1975, the term of office of the members of the Committee shall not exceed three years from the date of their appointment. Furthermore, S. 53 contemplates that the old bye-laws, if they happen to be inconsistent with any provision of the new Act, they have to be ignored. There is sufficient material in Tamil Nadu Act 27 of 1975 itself to draw the necessary implication that the old rules and rights if any acquired there under will have to be and give way to the new provisions. There is one other argument put forth by the learned Advocate General, appearing for the State which seems to give an answer, from another angle to this contention put forth by the learned counsel or the petitioners. This argument is based on the provisions of S. 18 of the, Tamil Nadu General Clauses Act, 1987. Section 18 of the Tamil Nadu General Clauses Act, 1897, read as follows: -

18- References to provisions in Acts repealed and re-enacted Where an Act repeals and re-enacts. with or without modification, all or any of the

provisions of a former Act, references in any other Act to the provisions so repealed shall be construed as references to the provisions so re-

enacted; and if modifications have been published, proclamations or certificates issued, powers conferred, forms prescribed, local limits defined,

offices established, orders. Rules and appointments made, engagements entered into, licences or permits granted, and other things duly done,

under the provisions so repealed, the same shall be deemed so far as the Same are Consistent with the provisions so re-enacted, to have been

respectively published. issued, conferred. prescribed, defined, established, made, entered into, granted or done under the provisions so reenacted.

Tamil Nadu Act 27 of 1975 is not only a repealing Act but also a re-enacting Act. If, this is so, only things done pursuant to the provisions of the

repealed Act in so far they are consistent with the provisions of reenacted Act alone could survive. Hence, the argument that S. 15(3) and (4) of

the Tamil Nadu, Act 27 of 1975 must be held to be prospective in operation, not doing away with the life offices already acquired pursuant to the

rules formulated under Act 21 of 1860, cannot survive and must be ignored.

29. There was a point taken about the Legislative competency with regard to Tamil Nadu Act 27 of 1975. But. the learned counsel for the

petitioners chose not to press forth the same, in view of the pronouncement of the Supreme Court in The Board of Trustees, Ayurvedic and Unani

Tibia College, Delhi Vs. The State of Delhi and Another, . The salient contention-, put forth and advanced More me and having some foundations

in the pleadings-are only those dealt with by me as above. T make it clear that I did not hear any other line of attack in support of the prayer in the

Writ Petition- and having foundations, in the pleadings, The discussion, which has preceded above, leaves me with no other alternative but to

dismiss the Writ Petitions.

30. Accordingly, the three Writ Petitions are dismissed. However, I make no order as to costs.

31. Petitions dismissed.