
(2008) 09 MAD CK 0115

In the Madras High Court

Case No : Writ Petition (MD) No. 9600 of 2007 and M.P. (MD) No. 1 of 2007

V. Kasi

APPELLANT

Vs

The Inspector General of Registration and Others

RESPONDENT

Date of Decision : 17-09-2008

Acts Referred:

Tamil Nadu Societies Registration Act, 1975 — Section 15(3), 15(4), 34, 5(3), 5(4)

Citation : (2008) 09 MAD CK 0115

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : T.R. Rajagopalan for V. Janakiramulu, for the Appellant; D. Sasikumar, Government Advocate for Respondents 1 to 3 and M.K. Hidayatullah, for Respondent 4, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides and perused the records.

2. In this writ petition, the petitioner seeks to challenge the order of the second respondent in approving Form:VII submitted by the fourth respondent dated 31.07.2007, as the President and Secretary of the EMG. Yadavar Mahalir Kalluri (Women's College Association) and in turn to approve the Form.7 dated 21.07.2007 submitted by him.

3. The writ petition was admitted on 20.11.2007 and notice was ordered to the respondents. The 4th respondent had entered appearance and counter affidavits have been filed by the second respondent and fourth respondent.

4. The grievance of the petitioner as projected in the affidavit filed in support of the writ petition is that according to the petitioner that EM. Gopalakrishna Kone Yadav Mahalir Kallururi Association was an Association with Registration No. 101/73 and it was registered on 12.09.1973. Out of the 1200 members, 60 members are elected to the Executive Committee. Out of which 15 were elected for the Governing Council. It is stated that the Executive committee was filled up

by election. After the death of Gopakirshna Yadav, during September, 2004, the post of Secretary fell vacant. It was stated that a meeting of the Executive Committee was convened without consulting the President. The said meeting amended the bye-law reducing the strength of the Executive Committee from 60 to 50. The said meeting held on 06.2.2005 was an illegal meeting. But, however, the second respondent, the District Registrar, approved that amendment on 13.02.2006.

5. A writ petition was filed by the Vice-President in W.P. No. 2153 of 2006. The writ petition was dismissed and consequently Writ Appeal was filed being Writ Appeal No. 230/06. The petitioner was directed to get himself impleaded in the suit pending in O.S.180/2005. It was stated by the Division Bench that it is only when the Civil Court decides that the meeting was illegal, the question of cancelling the proceedings, dated 13.02.2006, will arise. While the injunction against the suit was made absolute, the suit was still pending.

6. After the said order, the treasurer of the Executive Committee convened a meeting on 20.01.2007 and the petitioner got elected as the Secretary of the Association. He sent Form VII on 20.01.2007 to the second respondent for the purpose of registering the same.

7. It is in the meanwhile the President of the Society EMG.Soundarrajan died on 24.03.2007. Immediately, after his death, the 4th respondent claimed to have taken over the Presidentship of the Society. Though the said 4th respondent filed a clarification petition in a disposed Writ Appeal No. 238 of 2006, the same was dismissed. The 4th respondent also published an advertisement as if she was elected among the legal heirs of late EMG.Soundararajan. After constituting an interim Executive Committee consisting of 50 members, she got nominated as the Secretary to the Association. It was claimed that by G.O.Ms. No. 828, CT&RE, dated 13.06.2008, an exemption was given to the society, from conducting election to the Executive Committee.

8. The 4th respondent after the said meeting filed Form VII with the second respondent by which she was nominated as the President. The same was taken on file by the second respondent, (the District Registrar) with the following endorsement:

Form VII filed. The exemption application for condoning the delay in filing the annual reports is pending orders" signed on 31.07.2007

9. Therefore, the petitioner wanted that the present action of the second respondent to be cancelled and petitioners, Form VII should be recorded.

10. A counter affidavit has been filed by the second respondent dated 18.02.2008. In para :9, it is averred as follows:

9. It is submitted that The Registrar obtained legal opinion from the Government Pleader Madurai Bench of Madras High court. The Government Pleader in his letter dated 06.07.2007 had opined that the Registrar of Societies can take an

appropriate and suitable decision strictly in accordance with law on the Form No. VII submitted by the above mentioned Mrs. Indirani if otherwise in order, taking into consideration of exemption granted to the Association from the provisions of Sub-section (3) and (4) of Section 15 of the Act. Thirumathi. E.M.G. Indirani the 4th respondent herein appeared before the Registrar and deposed. But Thiru. V. Kasi the petitioner did not appear as required by the Registrar in his letter No. 1344/C1/2007 dated 17.07.2007. Considering all the above facts and since the Association is exempted from the application of Section 15(3) and 15(4) the Registrar decided to accept the Form VII returns filed by Thirumathi.Indirani, the 4th respondent herein.

11. Though the 4th respondent has filed a detailed a counter affidavit dated 26.08.2008 justifying her induction as the Secretary of the Association, it is not necessary to travel through the averments. It is enough to extract the following averment found in para:61 of the said counter affidavit:

I humbly submit that as against the approval of Form VII the only course and participate in the remedy available to the petitioner is to file a civil suit or the already pending suit O.S. No. 104 of 2007 and obtain a verdict from the Civil Court which is the only competent forum.

12. Even when these developments were taking place, one step sister of the 4th filed a writ petition being writ petition. No. 4119 of 2008 seeking for a direction to the second respondent to consider her representation regarding the cancellation of Form VII dated 31.07.2007 issued by the second respondent in favour of the 4th respondent.

13. Objection was raised regarding the maintainability of such a writ petition. This Court by an order dated 19.06.2008 dismissed the writ petition as not maintainable after following the Full Bench judgment and the subsequent Division Bench judgment.

14. Notwithstanding all these, Mr. T.R. Rajagopal, learned Senior Counsel appearing for the petitioner submitted that the second respondent cannot adopt different yardsticks one for the petitioner and another for other parties. He submitted that the Full Bench judgment in C.M.S. Evangelical Suvi David Memorial Higher Secondary School Committee Karisal Vs. The District Registrar and Others, , still left some scope for the registrar to go into the genuineness of Form VII. He made reference to the following passage found in para:20.

20...Validity of the election could very well be decided only by the competent Civil Court as the parties are entitled to let in their evidence to sustain their respective claims. In the event the Registrar satisfies himself as to the particulars furnished in Form VII as correct, he should enter the names in the register maintained for that purpose. In the event, if he does not satisfy as to the particulars and thereby does not accept Form VII, he has to issue a direction relegating the parties to approach the Civil Court for appropriate orders and thereafter shall act as per the orders of the Civil Court.

15. However, this argument overlooks the fact that the said Full Bench judgment came to be considered and further explained by a subsequent a Division Bench in R. Muralidaran and Others Vs. The District Registrar and Sidharth Heights Apartments Owners Association, . Therefore, it is necessary to refer para:39 from the said judgment:

39. Therefore, we hold that a writ would not lie against any ministerial act performed by the Registrar of Societies under the Provisions of the Tamil Nadu Societies Registration Act, including the acceptance or rejection of Form No. VII. Whenever Form No. VII is filed, the District Registrar can only call for further information/explanation and file the same along with the Form u/s 34 and he is not entitled to adjudicate any dispute. Therefore, the direction issued by the District Registrar in his order dated 30.05.2007 holding the elections held on 28.01.2007 to be invalid and directing the parties to go in for fresh election, cannot be sustained, on account of the fact that he exercised a jurisdiction not vested in him by law while accepting Form VII.

16. Therefore, in the light of the above, the prayer in the writ petition cannot be countenanced by this Court and the writ petition deserves to be dismissed.

17. However, Mr. T.R. Rajagopalan, learned Senior Counsel submitted that they have impleaded the 5th respondent, the Government as a Party, the 5th respondent to the writ petition to make them explain the basis under which G.O.Ms. No. 828 CT & RE Department dated 03.06.2008 came to be issued. They also wanted the original file to be produced so as to show as to which copy of the bye-laws was submitted for considering the grant of exemption from Section 5(3) and 5(4) of the Tamil Nadu Societies Registration Act, 1975. According to the petitioner, there seems two sets of byelaws.

18. First of all, Such a prayer does not arise out of the main writ petition. The petitioner cannot try to fish out information by filing miscellaneous petition which has no relevance to the main relief claimed. In any event, the civil proceedings is the best forum to get intero-gateries to be issued and for discovery of documents. Therefore, the prayer of the learned Senior Counsel is not acceptable.

19. In the light of the above, the writ petition stands dismissed. However, there will be no order as to costs. Consequently, connected M.P is closed.