

**(2014) 06 MAD CK 0226**

**In the Madras High Court**

**Case No : A.S. No. 178 of 2013 and M.P. No. 1 of 2013**

V. Rajan

APPELLANT

Vs

P.S. Govindaswami Naidu and Sons Charities

RESPONDENT

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**Date of Decision : 30-06-2014**

**Acts Referred:**

**Citation : (2014) 3 LW 739 : (2014) 6 MLJ 467**

**Hon'ble Judges : R.S. Ramanathan, J**

**Bench : Single Bench**

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## **Judgement**

R.S. Ramanathan, J.—The plaintiffs in O.S. No. 631 of 2012 on the file of the 1st Additional District Court, Coimbatore, are the appellants. The plaintiffs filed a suit for declaration that the Board Meeting of the first defendant Trust held on 25.04.2012 is illegal and not binding on the plaintiffs and to declare that the Board Meeting of the first defendant Trust held on 30.07.2012 is illegal and not binding on the plaintiffs and to grant a mandatory injunction directing the defendants 1 to 9 to appoint the second plaintiff as one of the founder Trustees representing the branch of Late PSG Narayanasamy Naidu as per the stipulations laid down in SOA and for injunction restraining the defendants 1 to 9 from appointing the 10th defendant representing the branch of Late PSG Narayanasamy Naidu and for permanent injunction restraining the defendants 1 to 9 from taking any Policy decisions in the ensuing the Board Meetings. The suit was dismissed and a direction was issued to the Board of Trustees, the defendants 2 to 4 to choose one from among the 2nd plaintiff and the 10th defendant to represent the branch of Late PSG Narayanasamy Naidu or any other person by filling the vacancy in the first defendant Trust and passed an interim injunction to the same effect till the disposal of the suit and to award the cost of the suit. Aggrieved by the same, the Appeal Suit is filed.

2. The case of the plaintiff, so far as the case in dispute is concerned as follows:--

A Deed of Trust, dated 25.01.1926 came into existence on 25.01.1926 and O.S. No. 145 of 1935 was filed for framing a Scheme for Administration of the Trust.

In the said suit O.S. No. 145 of 1935, a scheme decree was passed and various amendments were made and so far as the dispute relating to the suit is concerned, Chapter IV of the Scheme is relevant. Chapter IV deals with Board of Trustees, their power and appointment, including founder Trustee, in case a vacancy arises for the post of other Trustees of founder Trustee. Chapter IV(A) stipulates that subject to the provision herein contained a Founder Trustee shall be entitled to hold Office for life and Chapter IV(B) deals with qualifications and disqualifications for Trusteeship. Chapter IV(D) deals with filling up of vacancies in respect of founder Trustees. The first respondent is one of the founder Trustees along with other founder Trustees, namely the defendants 2 to 4 and the first plaintiff is representing the branch of PSG Narayanasamy Naidu. The first plaintiff became the founder Trustee on the expiry of G.N. Venkatapathy, who died in January 1990 and was also selected as a Managing Trustee of the first defendant for a period from 2000 to 2005 and the adult male descendants, who are eligible in the line of late PSG Narayanasamy Naidu are the first plaintiff, his son the 2nd plaintiff and the 10th defendant, who is the son of G.N. Venkatapathy. The 1st plaintiff expressed his unwillingness to retire as one of the founder Trustees and therefore, submitted a letter, dated 25.04.2012 to the first defendant expressing his intention of resignation voluntarily and also made it clear that by reason of his resignation as a founder Trustee, the branch representing PSG Narayanasamy Naidu can be filled up by appointing the 2nd plaintiff, his son, as he and the 2nd plaintiff constitute majority representing the branch of PSG, which has three members including the 10th defendant and therefore the 2nd plaintiff has to be selected as founder Trustee representing the branch of PSG Narayanasamy Naidu. According to the plaintiffs, the Board Meeting was held on 25.04.2012. The contents of the letter sent by the first defendant, dated 25.04.2012 was not recorded accurately and as per the Scheme and as per the provision of the scheme stated in Chapter IV(D), the 2nd plaintiff ought to have been appointed as founder Trustee representing the branch of PSG Narayanasamy Naidu. However, the 2nd defendant sent an Email to the 2nd plaintiff, dated 27.04.2012 stating that the Board of Trustees received a letter, dated 27.04.2012 from the 10th defendant seeking his claim to be appointed as Founder Trustee representing the branch of late PSG Narayanasamy Naidu and the draft minutes of the meeting, dated 25.04.2012 was received by the first respondent on 03.05.2012. The first plaintiff immediately sent a letter to the 2nd defendant on 09.05.2012 pointing out the inaccuracies in recording the minutes, dated 25.04.2012 and also pointed out that there were no discussions in the quarterly meeting held on 25.04.2012 and there was no necessity to intimate the legal descendants of the branch representing PSG Narayanasamy Naidu and with an oblique motive, the defendants 2 to 9 included the said resolution without any basis behind the back of the first defendant and the defendants 2 to 10 colluded with each other with the object of appointing the 10th defendant as founder Trustee representing the branch of the late PSG Narayanasamy Naidu and the draft minutes of the meeting, dated 25.04.2012 was objected within the stipulated time of seven days by the first plaintiff and

therefore, the minutes of the Board Meeting, dated 25.04.2012 is per se illegal and cannot be enforced and the resolution passed in that said meeting, accepting the resignation of the first plaintiff from the post of founder Trustee, without considering the appointment of the 2nd plaintiff, as founder Trustee in the place of the first plaintiff is also not sustainable.

3. It is further stated that the petitioner was not informed about the Board Meeting held on 30.07.2012 and the draft minutes recorded in the quarterly meeting, dated 30.07.2012 stating that Scheme of Administration does not provide for a founder Trustee to nominate his successor to the position is not correct and therefore, the meeting held on 30.07.2012 is illegal and not binding on the plaintiffs.

4. It is further claimed that the branch of Late PSG Narayanasamy Naidu is consisting of three adult male descendants, namely the plaintiffs and the 10th defendant and the first plaintiff having resigned from the post of founder Trustee is entitled to take part in the selection of the founder Trustee from among the other descendants of the PSG Narayanasamy Naidu and as per Chapter IV(D), the majority decision will prevail in selecting the founder Trustee and the plaintiffs and two in number and they constitute majority and they selected the 2nd plaintiff representing the branch of PSG Narayanasamy Naidu and that has to be accepted and the steps taken by the defendants 1 to 9 to intimate the vacancy for the post of founder Trustee representing the branch of PSG Narayanasamy Naidu by excluding the first plaintiff and stating that there are two persons to be considered, namely the 2nd plaintiff and the 10th defendant and therefore, the founder Trustee representing the branch of PSG Narayanasamy Naidu has to be selected among those two persons, is contrary to the Scheme of Administration and therefore, prayed for the relief of mandatory injunction directing the defendants 1 to 9 to appoint the second plaintiff as one of the founder Trustees representing the branch of Late PSG Narayanasamy Naidu as per the stipulations laid down in the SOA and for permanent injunction restraining the defendants 1 to 9 from appointing the 10th defendant representing the branch of Late PSG Narayanasamy Naidu or any other persons by filling up the vacancy in the first defendant Trust and pass an ad-interim injunction to the same effect till the disposal of the suit.

5. The defence version is as follows:--

The first defendant Trustee filed a written statement and the same was adopted by the defendants 2 and 3. It is stated that the first plaintiff tendered his letter, dated 25.04.2012 intimating his resignation from the Board and also nominated his son as his successor and the letter was placed before the Board in its quarterly meeting held on 25.04.2012 and the letter of the first plaintiff was recorded and by reason of his resignation, the first plaintiff ceased to be the founder Trustee of the first defendant Trust on and from 25.05.2012 and as per the Scheme of the Administration, in the said meeting, it was unanimously requested the 2nd defendant to intimate the lineal descendants of Late PSG

Narayanasamy Naidu about the vacancy and admittedly, the 10th defendant is also a male descendant in the branch of PSG Narayanasamy Naidu and by his letter, dated 18.10.2011, he expressed his willingness to be appointed as founder Trustee representing the branch of Late PSG Narayanasamy Naidu and that was followed by him in his letter, dated 25.04.2012 after the resignation of the first plaintiff from the post of Trustee. Therefore, after obtaining the legal opinion from two eminent lawyers, the 2nd defendant by his letter, dated 31.07.2012 apprised the first plaintiff that the legal opinion submitted by the first plaintiff and the legal opinion obtained by the Board would be placed before the Board for its consideration and in the meeting held on 30.07.2012, no decision was taken and a final decision is still to emerge on the issue and therefore, the suit is not maintainable in respect of the second prayer.

6. It is further stated that all the founder Trustees attended the meeting held on 25.04.2012 accepting the draft minute and the Board considered that it may not be proper to recognize the nomination of the 2nd plaintiff to the office without proper consideration and the Board cannot be directed to record the second respondent as founder Trustee and the Board is not colluding with other Trustees and illegally appointed the 10th defendant and the defendants are not making any attempt to fill up the vacancies by appointing the Trustees of their own choice and after resignation of the first plaintiff, there is no need to inform the first plaintiff and the minutes of the meeting held on 25.04.2012 and 30.07.2012 was properly recorded and therefore, there is no question of nomination of Trustees as per the Scheme of Administration and therefore, the suit is liable to be dismissed.

7. The 4th defendant, who filed independent written statement substantially supported the stand taken by the defendants 1 to 3. He further contended that the scheme was framed in O.S. No. 145 of 1935 by the Principal Sub Court and therefore, any violation of the Scheme of Administration or seeking its implementation can be done before that court framed the scheme and the present suit is not maintainable.

8. The 10th defendant filed a separate written statement and stated that as per the Chapter IV(D)(c), where there are more than one male competitor in any branch of the Founder Trustee for filling up a vacancy arising in that branch then those competitors alone constitute the electoral college for selecting or electing the successor Trustee to fill up the vacancy and the first plaintiff as a founder Trustee cannot be considered as competitor within the meaning of the Scheme of Administration and as per the Scheme of Administration, one of the eligible competitors has to be selected and there is no provision for nominating the successor by a predecessor. He also submitted that he satisfies the eligibility criteria as stated in Chapter IV(B) of the Scheme of Administration and is not disqualified as per Chapter IV(B)(b). He, therefore, submitted that he is also one of the competitors to be considered for the post of founder Trustee representing the branch of PSG Narayanasamy Naidu along with the 2nd plaintiff and

therefore, the Board is competent to select one among them and therefore, the prayer for mandatory injunction to nominate the 2nd plaintiff as founder Trustee is not maintainable.

9. On the basis of the above pleadings, the following issues were recast by the trial court:--

1. Whether the 1st plaintiff has a right to vote in electing a Trustee to Narayanasamy Naidu's branch?

2. Whether the suit is maintainable and whether the court has jurisdiction to entertain the suit?

3. To what reliefs the plaintiffs are entitled to?

4. Whether this court is competent to grant any relief to the plaintiffs?

10. No oral evidence was adduced on either side. On the side of the plaintiffs, Exs. A1 to A12 were marked and on the side of the defendants, Exs. B1 to B34 were marked by consent.

11. The trial court answered Issue No. 2 in affirmative and held that the suit is maintainable and the controversy is in respect of the right to hold the office and therefore, the controversy involved in this case is private in nature and section 92 has no application and therefore, the suit is maintainable.

12. The trial court answered Issue No. 1 against the plaintiffs, accepting the argument of the learned counsel appearing for the 10th defendant and held that by tendering his resignation, the first plaintiff became disqualified to be a competitor or to be a member of an electoral college to elect a member representing the branch of PSG Narayanasamy Naidu and he lost his voting right to select or elect his successor.

13. The trial court also answered Issues Nos. 3 and 4 that after resignation of the first plaintiff from the post of founder Trustee, he cannot become a competitor and he cannot become a member of the electoral college representing the branch of PSG Narayanasamy Naidu to elect any successor and therefore, the 2nd plaintiff and the 10th defendant are two competitors, representing the branch of PSG Narayanasamy Naidu and as per SOA, the defendants 2 to 4 are competent to choose one from the 2nd plaintiff and the 10th defendant to represent the branch of PSG Narayanasamy Naidu and granted four weeks time to the defendants 2 to 4 to elect, either the 2nd plaintiff or the 10th defendant as founder Trustee representing the branch of PSG Narayanasamy Naidu and dismissed the suit with the above directions.

14. Mr. M.S. Krishnan, the learned Senior counsel appearing for the appellants/ plaintiffs submitted that Chapter IV(D) of the Scheme has to be read as a whole and it deals with filling of the vacancies in the founder Trustees and without properly appreciating the Chapter IV(D)(1)(a), the learned trial Judge interpreted clause by holding that the first plaintiff lost his competency and he ceased to be

the competitor to elect any person representing the branch of PSG Narayanasamy Naidu by his resignation and therefore, he cannot nominate the 2nd plaintiff in his office.

15. The learned Senior counsel further submitted that the words of the letter, dated 25.04.2012 sent by the first plaintiff tendering his resignation and communicating his consent, the 2nd plaintiff as founder Trustee, may not be appropriately worded and the essence of the letter was that on his resignation, the post has to be filled up from among the male descendants of PSG Narayanasamy Naidu and there are three members representing the branch and the first plaintiff has not incurred any disqualification on submitting his resignation and therefore, among the three competitors, he and his son constitute the majority and they elected the 2nd plaintiff and therefore, the Board or the defendants 2 to 4 or the 10th defendant have no right to challenge or question the same and they are bound by the decision taken by the majority, namely the plaintiffs and therefore, the action by the Board intimating the vacancy to other members holding that the first plaintiff is not entitled to participate in the selection and there are only 2 members representing PSG Narayanasamy Naidu to elect their representative and the action of the Board and the defendants 2 to 4 is illegal

16. The learned Senior counsel also submitted the notes of arguments regarding the interpretation of clause IV(B). He also submitted that as per 2nd para of Chapter IV(D)(1)(c), a person, who is competent to hold the office of the founder Trustee and expressed his unwillingness to accept that office was only precluded from putting forward his rights again, but he is entitled to exercise his voting right in the selection of the founder Trustees and therefore, by resignation of founder Trustee, the first plaintiff has only expressed his unwilling to accept the office in future and as per second para of Chapter IV(D)(1)(c), he cannot contest for the post of founder Trustee, but he is entitled to vote in the selection of the founder Trustees representing his branch and that was not properly appreciated by the learned trial Judge.

17. He further submitted that the trial court erroneously interpreted Chapter IV(D)(1) 1st para and erred in interpreting the word "themselves" would only mean these persons, who are competent to hold the office and the first plaintiff having resigned the post is not competent to hold the office and therefore, he cannot be a member of the electoral college and he cannot be brought within the word "themselves". He, therefore, contended that the trial court committed a serious error in holding that by tendering his resignation, the first plaintiff lost his competency to hold the office and therefore, he cannot be a member of the electoral college to elect a member and that basic error leads to a conclusion that there are only two persons to be considered for the post of founder Trustees to represent the branch of PSG Narayanasamy Naidu and once, it is held that the first plaintiff did not lose his competency by his resignation to select the founder Trustee, then among the three members, the plaintiffs constitute majority and

therefore, the selection of the 2nd plaintiff as a founder Trustee, representing the branch of PSG Narayanasamy Naidu has to be upheld and the suit ought to have been decreed as prayed for.

18. Mr. T.R. Rajagopalan, the learned Senior counsel appearing for the 10th defendant and Mr. M. Venkatachalapathy, the learned Senior counsel appearing for the respondents 1 to 3 submitted that the learned trial Judge correctly interpreted the word "themselves" and various clauses, namely Chapter IV(D) (c), IV(D)(1), (a)(c) and rightly held that the first plaintiff after resignation lost his competency to contest for the post of founder Trustee and therefore, he cannot be a member of the electoral college and only those members, who can be considered as competitors can form a electoral college and therefore, the learned trial Judge was right in holding that there are only two persons representing the branch of PSG Narayanaswamy Naidu, namely the 2nd plaintiff and the 10th defendant and therefore, the selection of the 2nd plaintiff by the plaintiffs claiming to be the majority is not valid and rightly directed the Managing Trustees, the defendants 2 to 4 to select one from the 2nd plaintiff and the 10th defendant and therefore, there is no need to set aside the judgment of the learned trial Judge.

19. The learned Senior counsel further submitted that the intention of the founders was also made clear by the second para of Chapter IV(D)(1)(c) and it has been specifically stated that if any person competent to hold the office of the founder trustee and also expressed his unwillingness to accept the office, he shall be precluded from putting forward his rights again and the word used "unwilling to accept the office" would mean that a person who was not holding office earlier and had it been the intention of the founder that the person who held the office of the founder Trustee earlier can also be considered as competent to hold office in future, they would have used the expression ""unwilling to continue in the office" and therefore, having regard to the employment of the expression "unwilling to accept the office" would only mean that a person who already held the office of the founder Trustee and subsequently, relinquished that office by way of resignation, cannot be considered as competent person to hold the office of the founder Trustee and when he was not competent to hold the office, he cannot be a member of the electoral college and that was properly appreciated by the learned trial Judge and held that the first plaintiff was not competent to hold the office of the founder Trustee after his resignation and once, the first plaintiff is excluded, there are only two persons representing the branch and admittedly, there is no consensus among two members and therefore, the learned trial Judge was right in directing the rest of the founder Trustees, the defendants 2 to 4 to select one from such competitors as per Chapter IV(D)(1) (c).

20. The learned Senior counsel further submitted that Chapter IV(B)(5) enables a member of the Board for reappointment, if he failed to attend five consecutive meetings, as per the provision of SOA and therefore, only when a person incurs

disqualification by not attending five consecutive meetings, can be considered for reappointment and in other-words, a person can be considered for "reappointment" and when a person resigned his Trustee post, who is otherwise entitled to hold the office for life, he is not entitled to participate in the selection process and he cannot be a member of electoral college to select the successor.

21. The learned Senior counsel, therefore, submitted that the trial court considered all these aspects in accordance with various clauses and also in accordance with the interpretation of the documents and therefore, the judgment and the decree of the trial court has to be upheld and the appeal suit is liable to be dismissed.

22. On the basis of the above Submissions, the following points for consideration arise in this appeal suit:--

1. Whether the first plaintiff lost his competency and became ineligible to elect his successor by reason of his resignation as held by the trial court?
2. Whether the declaratory relief sought for by the plaintiffs that the Board Meeting of the Trust held on 25.04.2012 and 30.07.2012 are illegal and not binding on the plaintiffs?
3. Whether the plaintiffs are entitled to the relief of mandatory injunction directing the defendants 1 to 9 to appoint the 2nd plaintiff as one of the trustees representing the branch of PSG Narayanasamy Naidu?
4. Whether the defendants 1 to 9 are to be restrained from appointing the 10th defendant as representing the branch of PSG Narayanasamy Naidu?
5. Whether the defendants 1 to 9 are injected from taking policy decision in the ensuing board meeting?

Point for consideration No. 2:

23. Though the plaintiffs prayed for declaration regarding the Board Meeting held on 25.04.2012 and 30.07.2012 as void and not binding on them, no specific issues were framed regarding those prayers and the learned trial Judge considered those points in para 29.1 in his judgment, but did not give any specific answer to those points and held that the defendants 2 to 4 shall choose one from among the 2nd plaintiff and 10th defendant to represent the branch of PSG Narayanasamy Naidu and answered the issues 3 and 4 and were decided accordingly. According to me, the learned trial Judge ought to have given a specific finding regarding those two prayers, as parties have pleaded their cases with regard to those two prayers and the defendants challenged the case of the plaintiffs and contended that the meeting held on 25.04.2012 was valid and binding on the plaintiffs and on 30.07.2012, no decision was taken except to approve the minutes of the meeting held on 25.04.2012.

24. It is the case of the plaintiffs that in the meeting held on 25.04.2012, the first plaintiff submitted his resignation, letter, dated 25.04.2012 and the Board

accepted the resignation, but did not accept the selection of the 2nd plaintiff as his choice of the majority and the discussions of the meeting held on 25.04.2012 was not reflected in the minutes of the meeting circulated and on that ground, declaration was sought for that the Board Meeting of the first defendant Trust on 25.04.2012 was illegal and not binding on the plaintiffs. According to me, there was no irregularity in the convening of the Board Meeting on 25.04.2012 and the only objection of the plaintiffs was that in that meeting held on 25.04.2012, it was not decided to give notice of the vacancy to other eligible members of the branch of PSG Narayanasamy Naidu and in the draft minutes circulated to the first plaintiff that was mentioned and therefore, the minutes has to be declared as null and void. Similarly, in the meeting held on 30.07.2012, the draft minutes of the meeting held on 25.04.2012 was approved and it was decided to get opinion from the Senior counsel in respect of the letters received from the 10th defendant together with the legal opinion enclosed along with the letter, Admittedly, the first plaintiff tendered his resignation and as per his letter, dated 25.04.2012, his resignation was not subjected to any condition and therefore, there is nothing wrong in accepting the resignation by the Board, when the same was placed before the Board Meeting.

25. Further, as per Chapter IV(D), whenever a vacancy arises, the legal descendants of the respective branches should be intimated and that was resolved in that meeting. The only contention of the plaintiffs was that in the meeting held on 25.04.2012, it was not discussed but in the draft minutes, it was found and therefore, the draft minutes containing certain resolution, which was not discussed in the meeting held on 25.04.2012 has to be declared as void and not binding on the plaintiffs. The minutes of the meeting, dated 25.04.2012 submitted before the first plaintiff tendering his resignation is admitted and in the letter, the first plaintiff also stated that he and his son, the 2nd plaintiff constitute or represent majority of the branch of the PSG Narayanasamy Naidu and therefore, the 2nd plaintiff was appointed in his place. Whether the first plaintiff was entitled to nominate his successor or whether the plaintiffs formed majority and therefore, entitled to select one among them, is a matter of dispute to be considered later. But as per the Scheme of Administration, whenever any vacancy arises for the post of founder Trustee, the other descendants of the branch are to be informed and the resolution passed to that effect cannot be considered as illegal and therefore, the contention of the plaintiffs that the meeting held on 25.04.2012 is void and not binding on the plaintiffs cannot be accepted.

26. Similarly, it has been stated in the written statement that in the meeting held on 30.07.2012, no final decision regarding the successor in the branch of PSG Narayanasamy Naidu was taken and it is also evident from Ex. A9 that in the meeting held on 30.07.2012, the minutes of the meeting held on 25.04.2012 was confirmed and the opinion was sought for from two Senior Advocates regarding the claim made by the 10th defendant. Therefore, the plaintiffs cannot seek declaration that the meeting held on 25.04.2012 and 30.07.2012 are illegal

and void and not binding on the plaintiffs and point for consideration No. 2 is answered against the plaintiffs/appellants.

27. Though no arguments were advanced in this appeal suit regarding the above points for consideration, having regard to the pleadings in the suit and having regard to the fact that the learned trial Judge though framed those issues in para 29.1 in the judgment, did not give any specific answer to those issues, I am constrained to discuss that point for consideration for the sake of completion of the judgment.

28. Points for consideration No. 1, 3 and 4: To appreciate the contention of both parties, we will have to see the clause in the Scheme of Administration, hereinafter referred to as SOA, Chapter IV is having the caption "The Board of Trustees", Chapter IV(B) deals with qualifications and disqualifications for Trusteeship and Chapter IV(C) deals with vacancies and Chapter IV(D) deals with filling up of vacancies regarding founder Trustees. In this case, we are concerned only with vacancies caused for the post of founder Trustees and therefore, we will have to see the provisions regarding the filling up of vacancies in respect of founder Trustees, as found in Chapter IV(D)(1)(a)(b),(c),(d) and

29. As regard the qualification of the plaintiffs and the 10th defendant are concerned, it is admitted that both the plaintiffs and the 10th defendant are qualified to be considered for the post of founder Trustees. It is also admitted that they did not incur any disqualification from holding that post. According to the learned Senior counsel appearing for the respondents 1 to 3 and 10 and as per the findings of the learned trial Judge, though the first plaintiff was qualified, after having submitted his resignation, he suffered disqualification and therefore, he was not competent to contest to the office of the founder Trustee or in other-words, he lost his competency by reason of his resignation to elect the founder Trustee and only those persons, who are competent to hold the post are entitled to choose one from among themselves to elect or select a founder Trustee as per Clause [c] of Chapter IV(D) (1) and therefore, excluding the first plaintiff, who lost competency, the persons who are eligible to be considered to the office of the founder Trustee representing PSG Narayanasamy Naidu are the 2nd plaintiff and the 10th defendant and therefore, the trial court was right in directing the other Trustees, namely the plaintiffs 2 to 4 to select one among them and as there was consensus among them.

30. It is the further contention of the learned Senior counsel appearing for the respondents 1 to 3 and 10 that as per sub clause 5 of Chapter IV(C), reappointment is permitted when a Trustee ceased to be a member on his failure to attend five consecutive meetings and in other case, there is no question of reappointment and therefore, once a Trustee resigned his/her post, he cannot be considered for reappointment and he lost his competency to hold the office and therefore, he cannot be considered to be member of the electoral college to elect or select a person from that branch. The learned trial Judge held that the first plaintiff was having competency to hold the post of the founder Trustee in the

office and after submitting his resignation, he lost his competency to hold the office of the founder Trustee and therefore, he cannot be a member of the electoral college to elect/select a member from the branch of PSG Narayanasamy Naidu as founder Trustee.

31. According to me, the learned trial Judge as well as the learned Senior counsels appearing for the respondents 1 to 3 and 10 have not properly understood the difference between the qualifications prescribed as per Chapter IV(B) and the process of filling up the vacancy as stated in Chapter IV(D). As stated supra, there is no dispute that the plaintiffs and the 10th defendant are qualified to be considered for the post of founder Trustees and the question to be considered is whether the first plaintiff incurred disqualification by reason of the resignation and thereby, lost his competency to hold the office in future.

32. Chapter IV(D)(1) reads as follows:--

(D) FILLING UP OF VACANCIES:--

(1) FOUNDER TRUSTEES

(a) Whenever any vacancy arises in the office of a Founder Trustee, an adult male descendant in the male line of the original Founder Trustee, if existing and competent according to the rules herein contained, shall be eligible for appointment to that office.

(b) If there be only one in such line and he is willing to act he shall be appointed as Trustee by the Board of Trustees. If such person, however, could not be appointed thereto by reason of his not having the necessary qualifications for Trusteeship or by reason of his being disqualified for Trusteeship, then the remaining Founder Trustees shall proceed to fill up the vacancy in the same manner as if such person did not exist; but the person so appointed to the office shall hold office only till the disability ceases and on such disability ceasing the person entitled to succeed as herein before mentioned shall be appointed to the place of Trustee.

(c) If there are more than one in such line competent to hold office, according to the provisions herein contained, then they shall choose one from among themselves and the person so selected shall be appointed to the place. If there is disagreement among them then the opinion of the majority shall prevail. If there is no such majority concurring in such selection of one among them or if they do not select one from among themselves within six weeks of such vacancy then the remaining Founder Trustees shall either unanimously or by a majority select one from such competitors and the person so selected shall be appointed to fill the vacancy.

A person who is competent to hold office of a Founder Trustee who has however expressed his unwillingness to accept the office shall be precluded from putting forward his rights again but his right to exercise his vote in the selection of a founder Trustee in his line shall remain unaffected.

(d) If there be no competent person in such line or if the only person eligible for appointment expresses his unwillingness to accept the office then the office shall be filled up by the remaining founder trustees by selecting one competent and willing from the other lines, The person so selected will be appointed as Trustee and he shall be subject to the provisions herein contained hold office for life.

(e) If at any time there shall be a person in the line of any of the Founder Trustees competent to hold office under these rules his rights of succession shall belong to him and he shall be eligible for appointment to the office of a Founder Trustees notwithstanding that by reason of the absence of a person competent and willing in that line the remaining Founder Trustee selected a person from the other line.

33. As per clause 1(a), whenever any vacancy arises, an adult male descendant in the male line of the original Founder Trustee, if existing and competent shall be eligible for appointment to that post. Therefore, whenever any vacancy arises any persons representing the branch, who are in existence and competent, according to the rules, shall be eligible for appointment to that office. In this case, a vacancy arose for the post of founder Trustee in the branch of PSG Narayanasamy Naidu by reason of the resignation of the first plaintiff. Therefore, as per clause 1(a), an adult male descendant in the male line of the original Founder Trustee existing and competent is eligible for appointment to that office. The word "competent" has been interpreted by the learned trial Judge holding that the first plaintiff though was competent earlier to hold the office, by reason of his resignation lost his competency to hold the office. No-where in the scheme, it has been stipulated that a person who was appointed for life as a founder Trustee will loose his competency to be a member of a electoral college by reason of his resignation of that office and he cannot participate in the process of selecting any member in that branch. The 2nd para to Chapter IV(D) (1)(c) would make it clear that a person, who was competent to hold the office, but expressed his unwillingness to accept the office shall be precluded from putting forward his rights again to his right to exercise his vote for the selection of founder Trustee. Therefore, as per that clause, even though a person was competent to hold the office, nevertheless expressed his unwillingness to accept the office, he shall be precluded from making his right again, but his right to select a founder Trustee from his branch shall remain unaffected. According to me, the word "competency" will only mean the qualification prescribed in Chapter IV(D) and no other meaning can be attributed to the meaning of competency. A person is competent to hold the office only means that a person who is qualified to be appointed as Trustee. Therefore, when the first plaintiff is having qualification and does not incur any disqualification as per the Chapter IV(B), he is competent to hold the office and in the absence of any disqualification incurred by a person as per the clause Chapter IV(B), a person cannot be held to be competent in the past and not competent in future. A person, who was competent for appointment in the past must also be presumed to be competent for that said post in future, unless he incurred certain

disqualifications as per Chapter IV(B). In other-words so long as a person does not incur any disqualification, he does not loose his competency and he continues to be competent and be a member of the electoral college to elect or select a successor of his branch.

34. Further, it is also made clear by 2nd para of the Chapter IV(D)(1)(c) that a person, who is otherwise competent to hold the office, but expressed his unwillingness to accept the office, he shall be precluded from putting Forward his right " again". The word "again" assumes importance and having held the office of the founder Trustee and by submitting his resignation, the first plaintiff expressed his unwillingness to accept the office and therefore, he was precluded from putting forward his right again for the post of founder Trustee, but his right to exercise his vote in the selection of founder Trustee shall remain unaffected. If it is the intention of the founder or by framing of the Scheme of administration that a person who had held the office of the founder Trustee and submitted his resignation cannot be part of a team to select his successor, that would have been made clear in the Scheme of Administration, while dealing with the filling up of vacancies and the only rider placed in 2nd para of IV(D)(1)(c) is that he cannot contest for the post of founder Trustee after relinquishing his office and at the same time his right to select the successor is preserved. Unfortunately, the learned trial Judge misunderstood the word "competent" and failed to appreciate the word " again" and held that though the first plaintiff was qualified and competent to hold the office of the founder Trustee, by way of his resignation he incurred disqualification or he became incompetent to hold the office.

35. As stated supra, the first plaintiff is only prohibited from contesting for the post of founder Trustee, after having relinquished his office by expressing his unwillingness to accept the office and that has been made clear by second para of Chapter IV(D)(1)(c) and it is also made clear that by the resignation, he did not forfeit his right to participate in selecting the successor, Therefore, when a person, who satisfies the qualification as per the Chapter IV(B) and does not incur any disqualification, is competent to hold the office and such person, who had already held the office of the founder Trustee did not become incompetent or incur any disqualification from being a member of the electoral college for selecting the successor by reason of his resignation. The only prohibition is after resignation of his post, he cannot contest for the post of founder Trustee once again and that has been made clear in second part of Chapter IV(D)(1)(c).

36. According to me, Chapter IV(D)(1)(a)(b)(c) and (d) must be read together under the meaning of competency and qualification. The scheme provides for disqualification of a member either founder or otherwise- Nowhere it is stated that by resignation, a person is disqualified to be a member representing a branch. Therefore, a member, who is having necessary qualification and does not incur any disqualification is a member and can represent his branch. The only restriction imposed in Chapter D(1)(d) 2nd Para is that a person, who has expressed his unwillingness to accept the office, shall be precluded from putting

forward his right again, but also made it clear that his right to exercise his vote in the selection of a founder Trustee shall remain unaffected. If the argument of the learned Senior counsel for the respondents that the word used is "expressed his unwillingness to accept the office", which only mean that such person should not have held the office earlier and otherwise, they would have used the expression "unwillingness" to continue in office and therefore, a person, who has already held the office of the founder Trustee, after his resignation cannot be eligible to be a member of the electoral college is accepted, we would be acting against the intention of the framers of that SOA and hence that argument cannot be accepted. It is an accepted principle that all clauses must be interpreted with the intention of giving meaning to each clause. As stated supra, while prescribing the criteria of disqualification, it is not stated that by resigning from the post, a person incur disqualification. Further, Chapter IV Clause D speaks about competency. Therefore, the word "competent" can only mean qualification and any one, who is qualified and does not incur disqualification is competent. Further, a person who was competent to be a member to select a member of his branch for the post of founder Trustee did not become incompetent by reason of his resignation, Further, the word "again" would assume importance and clause D(1)(d) 2nd para only prohibits such person, who submitted his resignation cannot contest for the post once again and only other interpretation is doing violence to the entire Scheme of Administration.

37. The trial court having held in para 29.2 "subject to the fulfilling of the qualification criteria prescribed, choice of the person to be selected appears to be the exclusive prerogative of a branch that chooses him. The BOT has the only responsibility by receiving one so chosen, and there does not appear to be any residuary power in it to reject one who is so chosen by a branch", ought to have held that the first plaintiff is competent to be a member of electoral college and he did not incur any disqualification nor he became incompetent to be a member of the electoral college by reason of his resignation and therefore, the branch representing PSG Narayanasamy Naidu was having three members and the plaintiffs formed majority and therefore, the selection of the 2nd plaintiff as founder Trustee has to be accepted, even though the procedures contemplated by the Scheme of Administration has not been strictly followed by the plaintiffs. As per the Scheme of Administration, once a vacancy arises, it has to be notified to the existing and competent persons, who are eligible for the appointment to that office and as stated supra, the intimation must have been sent to the plaintiffs as well as to the 10th defendant and thereafter, if the plaintiffs, who constitute majority, select the 2nd plaintiff, the Board has no option except to accept the same. But in this case, that procedure has not been adopted and the first plaintiff alone has resigned and stated that he and his son formed majority and he nominated his son and instead of selecting him, he ought to have requested the Board to appoint his son the 2nd plaintiff as his successor. According to me, this is only a procedural irregularity that can be cured and therefore, the second plaintiff has been validly appointed or elected as a founder

Trustee by majority, namely the plaintiffs and the first plaintiff is also competent and be a member of the electoral college and he along with the 2nd plaintiff elected his successor.

38. As stated above, as the second plaintiff has been selected by majority, the first defendant has no option except to accept the selection of majority and therefore, the plaintiffs/appellants are entitled to the relief of mandatory injunction directing the defendants 1 to 9 to appoint the second plaintiff as one of the founder Trustees representing the branch of PSG Narayanasamy Naidu. Therefore, the points for consideration 1 and 3 are answered in favour of the plaintiffs/appellants.

39. Having regard to the answer given to the points for consideration Nos. 1 and 3, the point for consideration No. 4 has to be answered in favour of the appellants and the respondents 1 to 9 are to be injected from appointing the 10th defendant, representing the branch of PSG Narayanasamy Naidu and accordingly, Point No. 4 is answered.

40. Point for consideration No. 5. This point for consideration need not be answered, as no arguments were advanced in this regard. Further, having regard to the answer given to the points for consideration Nos. 1 to 4 and also having regard to the scope of the suit, the plaintiffs are not entitled to the relief of permanent injunction restraining the defendants 1 and 2 from taking policy decision in the ensuing Board Meeting. In the result, the Appeal Suit is partly allowed and the prayer [A] and [B] sought for in the plaint are negatived and the suit is dismissed in respect of prayer [A] and [B] and the prayer [C] and decree for mandatory injunction directing the defendants 1 to 9 to appoint the 2nd plaintiff as one of the founder Trustees representing the branch of PSG Narayanasamy Naidu is granted and also the prayer [(D)] is also decreed as prayed for and the prayer (E) is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.