

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

WA.No. 111 of 2013 () IN WP(C).14393/2011

AGAINST THE JUDGMENT IN WP(C) 14393/2011 DATED 27-06-2012

APPELLANT/3RD RESPONDENT :

APPURAJAN NADAR AGED 76 YEARS
S/O.PADMANABHAN NADAR, GENERAL SECRETARY
KERALA NADAR MAHAJANA SANGHAM, REGISTRATION NO.5/64
VAZHUTHACAUD
THIRUVANANTHAPURAM, RESIDING AT THOTTATHIL VEEDU
THANNIVILA, BALARAMAPURAM P.O., THILRUVANANTHAPURAM.

BY ADV. SRI.R.T.PRADEEP

RESPONDENTS/PETITIONER AND RESPONDENTS 1, 2 AND 4 :

1. KERALA NADAR MAHAJANA SANGHAM (KNMS),
REGISTRATION NO.5/64, VAZHUTHACAUD-695 001.
REPRESENTED BY ITS GENERAL SECRETARY
PARASSALA KRISHNANKUTTY, S/O.RAMASWAMY NADAR.
2. THE REGISTRAR OF SOCIETIES
OFFICE OF REGISTRAR OF SOCIETIES, TRANSPORT BHAVAN
EAST FORT, THIRUVANANTHAPURAM-695 004.
3. THE DISTRICT REGISTRAR GENERAL, THIRUVANANTHAPURAM-695 001.
4. SUNDARARAJ
GREENFIELD HOUSE, KATHIPPARA, KOOTHALI P.O.,
VELLARADA, THIRUVANANTHAPURAM-695 532.

R1 BY SRI.D.KISHORE
R2 & R3 BY SR.GOVERNMENT PLEADER, SRI.P.I. DAVIS
R4 BY ADV. SRI.S.EASWARAN
R4 BY ADV. SRI.P.MURALEEDHARAN (IRIMPANAM)
R4 BY ADV. SRI.M.A.AUGUSTINE

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 10-02-2015,
ALONG WITH WA. 1884/2012, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ASHOK BHUSHAN, Ag.C.J. & A.M. SHAFFIQUE, J.

W.A. No. 111 OF 2013

and

W.A. No. 1884 of 2012

Dated this the 10th day of February, 2015

JUDGMENT

Shaffique, J.

The 3rd respondent in W.P.(C) Nos. 14163 and 14393 of 2011 has filed the appeals challenging the common judgment dated 27.06.2012. W.P.(C) No. 14393 of 2011 was filed by the 1st respondent in W.A. No. 111 of 2013, the Kerala Nadar Mahajana Sangham. W.P.(C) No. 14163 of 2011 was filed by the 1st and 2nd respondents in W.A. No.1884 of 2012.

2. The petitioners in the writ petitions challenged the order dated 30.03.2011 issued by the Registrar of Co-operative Societies which is produced as Ext.P4 in W.P.(C) No. 14393 of 2011. The report is one which is purportedly prepared under Section 19 of the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (hereinafter referred to as 'the Act'). By Ext.P4 order the Registrar had issued certain directions, the translation of which reads as follows:

"Hence, Order is hereby issued approving that the managing committee lead by Sri.Appurajan Nadar that existed on 24.01.1998 was the managing committee as per the provisions of the bye-law, that as such the annual returns submitted by him only are acceptable, and that no other persons, other than the Society under the leadership of Sri.M.P.Appurajan Nadar can use the name Kerala Nadar Mahajana Sangham and the Register and its Register No.5/64.

It is also ordered that the annual returns submitted by the Petitioner, shall be filed, subject to the final decision in the case regarding the missing of files, and after obtaining orders from the Court as to what further action should be taken regarding the missing of files by filing petition before the Court through the Government Pleader, and until then the said files will be kept in this office under safe custody."

3. This order came to be issued on the basis of a complaint given by the appellant. The appellant claimed that he was elected as General Secretary of the Kerala Nadar Mahajana Sangham in the year 1998. According to him, the functioning of the Society was not in accordance with the bye laws and proper accounts and documents were not being maintained. He alleged that there were factional disputes and the Sangham which was

running a college has three factions managing its affairs. One faction is in control of the college which is now defunct and other factions are controlling the head office. Virtually the complaint was that there was no proper elected body which is functioning and the returns are not being filed in terms of the statutory provisions. Complaint seems to have been filed before the Minister which was later on directed to be considered by the Registrar of Co-operative Societies, which resulted in passing of Ext.P4 order. The writ petitioner challenging the aforesaid order inter alia contended that the Registrar has no jurisdiction under Section 19 of the Act to pass the impugned order.

4. Learned Single Judge after an elaborate consideration of the factual and legal issues in the matter allowed the writ petition setting aside Ext.P4 and declaring that it is not a report in terms of Section 19 of the Act. It is impugning the aforesaid judgment that these appeals have been filed.

5. Heard learned counsel for the appellant and learned counsel appearing for respondents and learned Government Pleader.

6. The main argument raised by learned counsel for the appellant is that sufficient powers are available with the Registrar to submit a report to the Government under Section 19. When there is an obligation on the Society to submit reports in terms of Section 7(3) of the Act and when there is failure to do so, it is always open for the Registrar to make an enquiry and submit appropriate report to the Government stating the malfunctioning of the Society and manner in which interference is required to be made by the Government in that regard.

7. Though in the report at Ext.P4 it is stated that the appellant managing Committee of 1998 have to continue, the said observation can never be dealt with to construe that the report is not made under Section 19 and it is for the Government to review the said report and take a decision in the matter. It is argued that the present management was irregularly constituted and their attempt is only to sell away the properties which are under their control. In such circumstances the Registrar was

justified in preparing the report in terms of Section 19. On the other hand, it is argued by learned counsel for the private respondents that the petitioner has resigned from the Society and therefore, he has no *locus standi* to submit any complaint to the Registrar. That apart, the complaint is filed after several years of his resigning from office and there is no factional dispute as alleged. If at all the petitioner has any complaint about the management of the Society, his remedy is to take appropriate steps under Section 25 of the Act and cannot call upon the Registrar to pass an order regarding the management of the Society. Learned counsel also relied upon the judgment of learned Single Judge of this Court in **Krishnankutty v. State of Kerala** [2007(1) KLT 978]. Paragraph 6 of the said judgment reads as under:

"6. S.19 of the T.C. Act confers power on the Government to call for accounts and inspection of books etc. The Government may, at any time, call upon the Governing Body of the society to submit periodical accounts of income and expenditure and of assets and liabilities of the society. The Registrar or any other officer authorised by the Government

shall periodically examine the accounts and other books of the society and submit report to the Government on the result of such inspection. The inspecting officer has the power of entry in the course of such inspection and the Governing Body and the servants of the society are bound to furnish information to the inspecting officer. Sub-s. (2) of S.19 confers on the inspecting officer the power to seize the books as also to conduct search in situations envisaged therein. Sub-s.(3) of S.19 provides that the Government may, for the efficient and better management of the society, review the reports submitted under S.19(1) and pass such orders as it deem fit. However, while the Government are empowered to pass such orders for the efficient and better management of the society, review the reports submitted under S.19(1) and pass such orders as it deem fit. However, while the Government are empowered to pass such orders for the efficient and better management of the society, it is precluded from issuing any order that would fall within clauses (a) to (c) of sub-s.(1) of S.25, which are those that could be passed by the District Court on an application to that court for dissolution, framing a scheme etc. in terms of S.25 of the T.C. Act. A conjoint reading of Ss.19 and 25 will show that the Government are vested with all the powers to pass such orders as are necessary for the efficient and better management of the society, except any order of the nature provided in clauses (a) to (c) of sub-s.(1) of S.25. The scheme of S.19 as a whole, provides the ways and means for the Government to reach at the required reports for assessment of the situation in relation to any society in question. All that it cannot do are removal of

existing Governing Body and appointment of fresh Governing Body or framing a scheme for the better and efficient management of the society or dissolving the society, which matters fall within the exclusive domain of the authority of the District Court in terms of S.25 of the T.C. Act.”

8. The short question to be considered in these appeals is whether the order at Ext.P4 is one passed under Section 19 of the Act. Section 19 of the Act reads as under:

“19. Power to call for accounts and inspection of books, etc.- The State Government may at any time call upon the governing body of any society to submit periodically: accounts of income and expenditure and of the assets and liabilities of the society. The Registrar or any other officer authorised by the State Government shall periodically examine the accounts and other books of the society and submit to the government a report on the result of such inspection. The inspecting officer may enter the premises of the society and the governing body and the servants of the society shall furnish him with all information he may call for and shall also render him all the assistance necessary to enable him to conduct the examination and make the report. It shall be the duty of the governing body and of all persons who are or have been servants of the society to produce before the officer so deputed all books and documents in their custody or power relating to the society and to answer any question relating to the affairs of the society.

(2) Whenever the inspecting officer, has reason to believe

that the accounts or other books and documents of the society are withheld without sufficient excuse, he may after recording the reasons and grounds of his belief, enter and search or cause to be searched any place or may seize any such account books or documents.

(3) the State Government may, for the efficient and better management of the society, review the report submitted under subsection (1) and pass such orders as they deem fit other than those referred to in clause (a) to (c) of sub-section (1) of Section 25."

9. On a perusal of Section 19 of the Act it is clear that the Registrar cannot pass any order as such. His power is limited to verify and examine the accounts and other books of the Society and submit to the Government a report based on such inspection. This power under Section 19 does not indicate that he can enter into a decision regarding the management of the Society nor can he resolve any factional dispute between the members of the managing committee. Apparently, even if such a report is available, by virtue of Section 19(3) of the Act, it is for the State Government to review the report and take appropriate action for the efficient and better management of the society.

However, the said power of the Government does not include a power which is to be exercised by the Court under Section 25(1) which inter alia provides for removal of the existing governing body and appointing fresh governing body or framing a scheme for the better and efficient management of the society or for dissolving the society.

10. A perusal of Ext.P4 order clearly indicates that the entire exercise made by Registrar is without jurisdiction. Section 19 of the Act cannot be invoked for the purpose of ousting the governing body which is managing the society. Therefore, it is not open for the Government to review the same. Further in Ext.P4 the Registrar has come to the conclusion as to who shall manage the society. This apparently is a wrong procedure adopted by the Registrar and therefore, the learned Single Judge was justified in setting aside Ext.P4. However, it is always open for the Government to take appropriate action in accordance with the procedure prescribed and there is no mandate for the Government to rely upon Ext.P4, as well.

WA No. 111 of 2013
and W.A. No. 1884 of 2012

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Under such circumstances we do not find any good ground to interfere with the judgment of the learned Single Judge. Accordingly, these appeals are dismissed.

**Ashok Bhushan,
Acting Chief Justice.**

**A.M. Shaffique,
Judge.**

ttb/12/02