



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:04.11.2015

Coram:

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THE HONOURABLE Mr.JUSTICE V.RAMASUBRAMANIAN
and
THE HONOURABLE Mr.JUSTICE N.KIRUBAKARAN

Writ Appeal (MD) No.1078 of 2015
and
M.P.(MD)No.1 of 2015

P.V.Kathiravan ... Appellant/Petitioner/
Petitioner

vs.

1.The Inspector General of Registration,
Santhome, Chennai.

2.The District Registrar,
Periyakulam, Theni District.

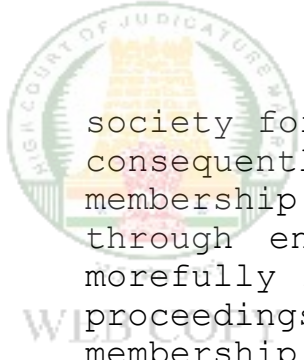
3.The Kallar Kalvi Kazhagam,
A Society, registered under the
Societies Registration Act,
rep.by its Administrator,
Usilampatti, Madurai District.

4.P.Balasubramaniam,
Secretary,
The Kallar Kalvi Kazhagam,
A Society, Regn.No.138/1967,
Pasumpon Muthuramalinga Thevar College Campus,
Usilampatti-625 532, Madurai District. ... Respondents/
Respondents/
Respondents

Writ Appeal filed under Clause 15 of Letters Patent, against
the order, dated 05.10.2015,made in M.P.(MD)No.2 of 2013 in W.P.
(MD)No.9008 of 2013.

Prayer in WP(MD). 9008/ 2013 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court To issue a WRIT OF
CERTIORARIFIED MANDAMUS, calling for the records relating to the
impugned notification of the 3rd respondent dated 1.6.2013
finalising the membership of the 3rd respondent society and the
impugned election notification of the 3rd respondent
dated 1.6.2013 proposing to conduct election to the 3rd respondent



society for the term of office 2013 to 2016 and quash the same and consequently direct the respondent 1 and 2 herein to decide the membership / voters list of the 3rd respondent society after through enquiry of the membership of the new inducted members morefully in the light of the orders of the 1st respondent in his proceedings No.3744/I2/2013 dated 15.5.2013 and also finalise the membership list before proceeding with the election by third respondent and conduct the election after finalization of voters'list by respondents 1 and 2 by following all the procedures in accordance with law.

Prayer in MP(MD). 2/ 2013 in WP(MD).9008/2013 :

To STAY the impugned notification of the 3rd respondent dated 1.6.2013 finalising the membership of the 3rd respondent society and the consequential impugned election notification of the 3rd respondent dated 1.6.2013 proposing to conduct election to the 3rd respondent society for the term of office 2013 to 2016 pending disposal of the above writ petition and pass such further or other orders.

For Appellant	: Mr.Veera Kathiravan
For Respondents-1&2	: Mr.A.K.Baskarapandian, Spl.Govt.Pleader.
For Respondent-3	: Mr.M.Vallinayagam, Senior Counsel for
For Respondent-4	: Mr.E.V.N.Siva

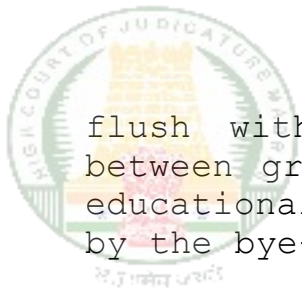
JUDGMENT

(Judgment of the Court was delivered by **V. RAMASUBRAMANIAN, J**)

The appeal arises out of an order passed by a learned Judge in a miscellaneous petition for stay, seeking to put on hold an election to a Society, registered under the Tamil Nadu Societies Registration Act.

2.Heard Mr.Veera Kathiravan, learned counsel for the appellant, Mr.A.K.Baskarapandian, learned Special Government Pleader for respondents 1 and 2, Mr.M.Vallinayagam, learned Senior Counsel appearing for respondent No.3 and Mr.E.V.N.Siva, learned counsel appearing for respondent No.4.

3.The Kallar Kalvi Kazhagam is a Society registered way back in the year 1967 as a Society under the Societies Registration Act (21 of 1860) and is deemed to be registered under the Societies Registration Act, 1975. The society has established a few educational institutions and it appears to be



flush with funds which has obviously led to lot of disputes between groups of individuals, who seek to gain control over the educational institutions through an electoral process contemplated by the bye-laws.

4. Way back in the year 2008, when Form-VII was filed with the District Registrar, indicating the names of the persons elected as office bearers, a writ petition came to be filed in W.P.(MD) No.3543 of 2008. While ordering notice in the writ petition, this Court granted an interim stay of operation of the registration of Form-VII by the District Registrar. When the interim order was challenged before a Division Bench in W.A.(MD) No.345 of 2008, the Division Bench took up the writ petition itself and dismissed the same, by an order dated 30.04.2008, on the ground that the filing of Form-VII, indicating the list of office bearers elected for various posts, was only a ministerial act and that it was not amenable to a challenge in a writ petition.

5. However, the said order was taken-up on appeal to the Supreme Court in SLP (Civil) Nos.12885 and 12886 of 2008. After leave was granted and the appeals were numbered as Civil Appeal Nos.6774 and 6775 of 2009, the parties reached a compromise. As per the compromise, Mr. Justice A. Ramamurthy, a retired Judge of this Court, was appointed as Administrator to conduct elections of office bearers of the Society, at the earliest.

6. Pursuant to the said order, the learned judge, appointed as Administrator, conducted elections on 15.05.2010 and one Mr. P. Balasubramaniam, who is the 4th respondent herein, was declared elected as the Secretary.

7. When the term of office of those elected in the said election was about to come to an end, a fresh round of litigation was started and two writ petitions came to be filed in W.P.(MD) Nos.3611 of 2013 and 5129 of 2013. While the former related to the appointment of teaching and non-teaching staff in the college run by the Society, the latter was for the issue of a mandamus to appoint a retired learned Judge of this Court as Administrator to conduct elections.

8. Both the writ petitions were taken-up together and were disposed of by a learned Judge, by an order dated 15.04.2013. The operative portion of the said order, in paragraph 15, reads as under:

"15. Since the parties wanted certain guidelines to be issued in respect of election, I am inclined to issue the following guidelines:

(i) The election should be conducted in accordance with the registered Bye-laws of Kallar Kalvi Kazhagam and the provisions of Tamil Nadu Societies Registration Act and the Rules made thereunder.



(ii) It is open to the Administrator to decide the mode of publication of election notification and service on individual members of the Society, taking into account the By-Laws of the Society and the mode adopted by Mr. Justice A. RAMAMURTHY for conducting the last election pursuant to the direction given by the Supreme Court.

(iii) The Administrator would be at liberty to decide all the issues in connection with the election.

(iv) The Administrator shall publish the electoral roll and will also deal with the objections to the voters list. After conducting enquiry, with respect to such of those objections, the Administrator will publish the final voters list.

(v) The statutory period between the date of publication of voters list, time for submission of objections and publication of final voters list, date of submission of nomination, scrutiny, withdrawal of nomination, publication of final list of candidates, the date of polling and counting will be fixed by the Administrator in accordance with the Bye-laws and the provisions of the Tamil Nadu Societies Registration Act and Rules made thereunder.

(vi) The present Managing Committee is permitted to conduct the day-to-day affairs of Kallar Kalvi Kazhagam till 15 May, 2013. However, no decision in connection with the election shall be taken by the Executive Committee.

(vii) In case the election process is not completed before 15 May, 2013, the present committee will continue to function under the guidance and supervision of Administrator. However, no policy decision shall be taken by the Committee.

(viii) The District Registrar, Periyakulam, Theni District, is directed to assist the Administrator for the smooth conduct of election.

(ix) The Executive Committee shall extend their co-operation to the Administrator in his functioning as the authority to conduct the election.

(x) The Superintendent of Police, Madurai, is directed to give necessary police protection for the smooth conduct of election.

(xi) The Administrator is permitted to take the assistance of Police, Revenue and all the other authorities for the peaceful conduct of the election and in case any such request for assistance is made, all such authorities shall extend their co-operation.

(xii) Since the period of the Executive Committee expires on 15 May, 2013, every effort should be taken by the Administrator to conclude the election process early and to hand over the management to the new Executive Committee."



9. However, the learned Judge appointed as Administrator by the said order could not accept the office on account of personal reasons. Therefore, by a modification order passed on 26.04.2013, Hon'ble Mr. Justice E. Padmanabhan was appointed as the Administrator.

10. Pursuant to the said appointment, the learned Administrator issued an advertisement in News Papers on 13.05.2013, proposing to hold elections on 02.06.2013. However, the Inspector General of Registration appears to have sent a communication, dated 15.05.2013, to the District Registrar pointing out certain irregularities that were recorded in a Report of the Deputy Inspector General of Registration and also directing the District Registrar to bring those facts to the notice of the learned Administrator.

11. As a consequence, the learned Administrator, by proceedings dated 18.05.2013, postponed the elections and handed-over the record of the members list and connected files to the District Registrar, Periyakulam.

12. Despite the postponement of the elections, the appellant herein moved a fresh writ petition in W.P.(MD) No. 8543 of 2013 seeking the issue of a writ of mandamus to direct the Inspector General of Registration and the District Registrar to finalise the voters list. Notice of Motion was ordered in the said writ petition on 22.05.2013. As a matter of fact, we do not know, how the said writ petition was maintainable in view of the fact that a retired Judge of this Court, appointed as the Administrator, was actually entrusted with the duty of finalising the voters list and the conduct of elections by a judicial order.

13. Be that as it may, the learned Administrator issued a fresh Notification, dated 01.06.2013, proposing to hold elections on 16.06.2013. But, unfortunately, this Notification fell short of the required notice period of 21 days. Therefore, yet another writ petition came to be filed by the appellant herein in W.P.(MD) No. 9008 of 2013. In the said writ petition, this Court granted an interim stay on 05.06.2013. As a consequence, elections could not be held on 16.06.2013.

14. In the meantime, two more writ petitions came to be filed in W.P.(MD) Nos. 9223 and 10045 of 2013. Therefore, the miscellaneous petitions in all three writ petitions were taken up together by a learned Judge on 25.02.2014 and an order was passed, by consent. The said order reads as follows:

"Today when the matter is taken up, all the parties have agreed to pass a consent order just for the reason that with regard to the original voters list, which is now in the custody of the Administrator, the grievance



made is that some of the applications either not eligible are included against the bye-laws. Hence, first of all, before conducting an election, the voters list should be made ready. For this limited purpose, all of them have agreed to the list of Five Members given by the fourth respondent in W.P.(MD) No.9008 of 2013 to be appointed as committee to verify the membership application. All the five members viz., 1.K.Chockanathan (Membership No.801), 2.S.Kubendran (Membership No.851), 3.S.P.Rajamani (Membership No.1089), 4.M.Manickam (Membership No.1691) and 5.P.Raman(Membership No.3206) will help and assist the Administrator to verify the voters list in consonance with the application forms and to note down as to whether any person, who is below the age limit, has been included or any person who does not come under the purview of the eligibility creteria has been included in the voters list. Further, along with the five members, a senior officer nominated by the District Registrar, Periyakulam, Theni District, will alone be permitted to see the records in the presence of the Administrator. The The Administrator has given certain suggestions which reads as follows:

'1. The members of the Committee alone shall be permitted for perusing the Register of the Members of the Society and its connected documents. They should not bring any other persons along with them.

2. The members of the Committee has to give an undertaking letter individually for the safety of the documents.

3. The members of the Committee shall peruse the documents in the presence of Assistant Election Officers appointed by the Administrator and the members are not entitled to take any of the documents outside the room provided for the perusal, for any reason.

4. The members have to file their objections in writing along with supporting materials if any to the Administrator or to the Assistant Election Officer within a time fixed by this Hon'ble Court.

5. The time for disposal of the objections may also be fixed by this Hon'ble Court.

6. The Administrator has to be empowered to dispose of the objections on the basis of written objections and supporting materials produced along with it, without any oral submissions.

7. Any person aggrieved over the decision of the Administrator regarding objections, are entitled to question the same in a manner known to law, only after completion of the Election process.

8. No member is entitled to initiate any legal



proceedings regarding the Election process in any Court or Forum and this Hon'ble Court shall make it clear that if any order is obtained the same shall not stand in the way of completing the Election process by the Administrator.'

2. The Committee of Five Members and a Senior Officer nominated by the District Registrar will adhere to the suggestions of the Administrator and scrutinize the records and if they have any objections, they can give only in writing to the Administrator. This process shall be done within one week commencing from 03.03.2014 and will end by 08.03.2014. The Administrator will have the sole discretion to pass orders, on the basis of the objections in writing given by the Five Members, insofar to accept the applications for removal of the names, if any, who have found to be ineligible and submit a new voter list along with the reasons, if any, on or before 11.03.2014. It is also made clear that immediately after the voters list is ready, after obtaining necessary permission from this Court, the elections shall be held as early as possible."

15. Pursuant to the said order, the learned Administrator filed a Report before this Court on 27.03.2014. Unfortunately, the parties, who showed anxiety to move the Court at every drop of the hat whenever election Notification was issued, allowed the matters to lie in a cold storage for more than 18 months, even after the learned Administrator filed a report on 27.03.2014. Eventually, all the miscellaneous petitions in all the three pending writ petitions, namely, M.P.(MD)Nos.2,2,2 and 3 of 2013 in W.P.(MD)Nos.9223, 9008 and 10045 of 2013 were taken by a learned Judge and after hearing the parties, the learned Judge passed an order on 05.10.2013, allowing the learned Administrator to proceed with the elections. The learned Administrator was requested to complete the election process within two months. It was also made clear by the learned Judge that any dispute between the parties could be agitated, after the election results, before the competent civil court. Aggrieved by the said order, the writ petitioner in W.P.(MD)No.9008 of 2013 has come up with the above writ appeal.

16. The writ appeal was admitted on 13.10.2015. But, no interim order was granted. Therefore, the learned Administrator issued a Notification for election on 29.10.2015. As per the Notification, elections are scheduled to be held on 29.11.2015. It is at this stage that the writ appeal was taken-up for hearing.

17. The main contentions of Mr. Veera Kathiravan, learned counsel for the appellant are:

(i) that by allowing the Administrator to go ahead with the elections, the learned Judge has virtually sealed the fate of the

writ petition;

(ii) that when the Inspector General of Registration, who is the head of a department and under whose control all the registered societies are functioning, had come to a conclusion way back in April, 2013 that the voters list was riddled with lot of discrepancies, the learned Administrator ought to have enquired into it;

(iii) that after the learned Administrator handed-over the records and files to the District Registrar, the box was found to have been tampered and even according to the Administrator, some of the applications found therein were incomplete; and

(iv) that when 2500 persons had been newly admitted, without the identities of many of them not being known and when their signatures not being found in the application forms, it was perplexing as to how the Administrator could have completed the enquiry relating to the discrepancies and announcing the election schedule.

18. We have carefully considered the above submissions.

19. First of all, we have our own doubts about the maintainability of the main writ petition itself, filed by the appellant. Admittedly, the Society in question was registered under the Societies Registration Act, 1860 and it is deemed to be registered under the Tamil Nadu Societies Registration Act, 1975. The very prayer made by the appellant herein in the main writ petition is as follows:

".... Writ of certiorarified Mandamus calling for the records relating to the impugned notification of the third respondent dated 1.6.2013 finalising the membership of the third respondent society and the consequential impugned election notification of the third respondent dated 1.6.2013 proposing to conduct election to the third respondent society for the term of office 2013 to 2016 and quash the same and consequently direct the respondents 1 and 2 herein to decide the membership/voters' list of the third respondent society after thorough enquiry of the membership of the newly inducted members more fully in the light of the orders of the first respondent in his proceedings No.3744/12/2013 dated 15.5.2013 and also finalise the membership list before proceeding with the election by third respondent and conduct the election after finalization of voters' list by respondents 1 and 2 by following all the procedures in accordance with law and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case"

20. We do not know as to how an election dispute relating to a society registered under the Societies Registration Act, could be agitated in a writ petition under Article 226 of the Constitution of India. If the very maintainability of the writ



petition is in doubt, the appellant cannot have an interim order to put on hold the elections. The second reason as to why the appellant cannot put on hold the elections is that as per the consent order passed by **K.K.Sasidharan, J** in W.P.(MD)Nos.3611 and 5129 of 2013, dated 15.04.2013, a retired learned Judge was appointed as Administrator for conducting the elections. The order of the learned Judge passed by consent, has already been extracted. It is seen from Clauses (iii) and (iv) of paragraph 15 of the order of the learned Judge, dated 15.04.2013, that the Administrator was given liberty to decide all issues, in connection with the election. The Administrator has acted as per these directions. Therefore, the appellant cannot ask for anything more.

21.The third reason as to why the appellant cannot put on hold the elections is the next consent order passed on 25.02.2014. By the said order, a Committee was constituted to verify the voters list in consonance with the application forms. Clause (7) of the order, dated 25.02.2014, makes it clear that any person aggrieved by the decision of the Administrator regarding objections, can question the same in a manner known to law, only after the completion of the election process. The appellant herein had consented to the said order and hence he cannot now go back on the consent.

22.In the Report filed on 27.03.2014, the learned Administrator has dealt with the objections. If the appellant is aggrieved, he must take up the issues only after the electoral process is over.

23.Reliance placed by the appellant on the report of the Inspector General of Registration is misconceived. We do not know as to how the Inspector General of Registration would have sent a communication, dated 15.05.2013, after this Court had appointed an Administrator. The Inspector General of Registration should not have poked his nose into the affairs by writing a letter to the District Registrar asking him to communicate with the learned Administrator.

24.Regarding the tampering of the box, the learned Administrator has already taken note of the same. He has arrived at a conclusion that the same could not have happened. This finding of fact cannot be challenged by the appellant in this writ petition.

25.Therefore, in fine, we find no justification to interfere with the interim order passed by the learned Single Judge pending main writ petition. Hence, the writ appeal is dismissed. No order as to costs. Connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(T&P)

/True copy/



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To

1.The Inspector General of Registration,
Santhome, Chennai.

2.The District Registrar,
Periyakulam, Theni District.

+1cc to Mr.Veera Kathiravan,Advocate SR No.64846

+1cc to Mr.D.Nallathambi,Advocate Sr NO.65103

+1cc to Mr.E.V.N.Siva,Advocate Sr No.65444

+1cc to Special Government Pleader Sr No.65019

Judgment in
W.A. (MD) No.1078/2015
and
MP (MD) No.1/2015

rg.AN-MP/20.11.2015 10P/7C

Dated:04.11.2015