

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

**CIVIL REVISION PETITION NO.3371 OF 2011
AND
WRIT PETITION NO.3521 OF 2012**

C.R.P.No.3371 of 2011:

Between:

Dr. J.L. Nair (died) and others .. Petitioners

and

The Vizagapatnam High School Society and others .. Respondents

-
W.P.No.3521 of 2012:

Between:

The Vizagapatnam High School Society .. Petitioner

and

State of Andhra Pradesh rep. by its
Principal Secretary to Government,
Home Department and others .. Respondents

DATE OF JUDGMENT PRONOUNCEMENT : 28th OCTOBER, 2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

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| 1. | Whether Reporters of Local newspapers
may be allowed to see the Judgment? | Yes/No |
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| 2. | Whether copies of the Judgment may be
marked to Law Reporters/Journals | Yes/No |
| | | |
| 3. | Whether His Lordship wishes to
see the fair copy of the Judgment? | Yes/No |

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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**CIVIL REVISION PETITION NO.3371 OF 2011
AND
WRIT PETITION NO.3521 OF 2012**

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COMMON ORDER

C.R.P.No.3371 of 2011 arises out of the order dated 18.07.2011 passed by the learned IV Additional District Judge, Visakhapatnam, in O.P.No.259 of 2006. The petitioners were respondents 1 to 9 in the said OP, while the petitioner therein is arrayed as the first respondent in the CRP. This OP was filed under Sections 19 and 23 of the Andhra Pradesh Societies Registration Act, 2001 (for brevity, 'the Act of 2001'), seeking a declaration that the body headed by Dr. J.L. Nair, being respondents 1 to 8 in the OP, was not a legally constituted body under the Act of 2001 and for a consequential injunction restraining them from interfering with the administration of Vizagapatnam High School Society headed by the petitioner and his team of office bearers; to declare the team of office bearers along with the petitioner as the legally constituted body of Vizagapatnam High School Society; to furnish the account for all the rents and monies received from respondents 10 to 13 in the OP from the date of their occupation; to furnish details of the properties received from late Dr. Lazarus for the benefit of the CBM High School, Visakhapatnam, and accounts for the monies received by them; to furnish the details of the endowment scholarship and Government scholarship amounts received from the Government for the benefit of school children; to furnish the statement of income and expenditure from the year 1988 till the date of filing of the petition, with an auditor's report, and to furnish the particulars of the property bequeathed by Dr. Lazarus and for costs.

By the order under revision, the trial Court allowed the OP in part declaring that the petitioner along with his team of office bearers was the legally constituted body of Vizagapatnam High School Society and further declaring that the body headed by the first respondent, with respondents 2 to 8, was not the legally constituted body under the Act of 2001 and injuncting them from interfering with the administration of the Vizagapatnam High School headed by the petitioner and his team of office bearers, but dismissed the rest of the petition without costs.

By order dated 20.06.2013, this Court directed *status quo* obtaining as on that date as regards the management of the first respondent society and the institution established by it.

Pertinent to note, the first respondent society, which was the petitioner in the OP, is described thus: 'The Vizagapatnam High School Society, represented by its Secretary-cum-Correspondent, Sri Nemani Prudhviraaj, son of Simons, aged 40 years, resident of Visakhapatnam and successor-in-office.'

To the extent relevant, the facts of the case are as under:

The Vizagapatnam High School Society, Visakhapatnam, was registered

under the provisions of the Societies Registration Act, 1860, in or around 1925-26. The bye-laws relating to this society were revised in the year 1976. The missionaries of the Canadian Baptist Overseas Mission administered this school earlier and it was then known as the Canadian Baptist Mission High School (CBM High School). One Dr. Lazarus was closely associated with the running of this school, apart from other educational institutions managed by the missionaries. After 1974, the Canadian missionaries who were managing the school left India. After the death of Dr. Lazarus, who was its Life Chairman, one Sakunthala Nair became the Chairman of the society. However, she resigned from the post and NC Simons was elected as the Chairman and Correspondent. Be it noted that NC Simons is none other than the father of Nemani Prudhviraj, who filed the subject OP before the trial Court on behalf of Vizagapatnam High School Society claiming to be its Secretary-cum-Correspondent.

However, the appointment of NC Simons was not approved and Dr. J.L. Nair, the husband of Sakunthala Nair, became the Chairman and Correspondent. Two rival groups therefore came into existence - one headed by Dr. J.L. Nair and the other headed by N.C. Simons. There was litigation between these groups. According to Nemani Prudhviraj, Dr. J.L. Nair was not entitled to hold the post of Chairman and Correspondent, in view of the observations made by the competent Court in the course of adjudicating such past litigation and the OP was therefore filed for the reliefs claimed therein.

Dr. J.L. Nair, who was alive at that point of time, filed his counter which was adopted by his team, respondents 2 to 8 in the OP. His first and foremost contention was that Nemani Prudhviraj had no *locus standi* to maintain the OP as he was a stranger to the society and was not its Secretary-cum-Correspondent, as claimed by him. Reference was made to O.S.No.808 of 1997 filed by N.C. Simons, father of Nemani Prudhviraj, along with one Krupavaram, as Chairman and Secretary respectively, against Dr. J.L. Nair, which ultimately ended in dismissal for non-prosecution. He further stated that N.C. Simons was formerly a member of the society but was expelled by the governing body. Reference was also made to various other disputes raised by and between the rival groups.

The trial Court framed, in effect, the following points for determination upon considering the pleadings.

1. Whether the team of office bearers along with the petitioner are the legally constituted body of Vizagapatnam High School Society and all the acts done in pursuance of the objectives of the society by them are legal and valid?

2. Whether the body headed by respondents 1 to 8 is not legally constituted body under the A.P. Registration of Societies Act, 2001?
3. If so, whether the petitioner is entitled for consequential relief of injunction restraining them from ever interfering with the administration of Vizagapatnam High School Society headed by the petitioner and his team of office bearers?
4. Whether the respondents 1 to 8 are liable to furnish accounts for all the monies and rents received from the respondents 10 to 13 from the date of their occupation till the date of the petition?
5. Whether the respondents 1 to 9 are liable to furnish the details of the properties received from Padmasri Late Dr. Lazarus for the benefit of the CBM High School, Visakhapatnam and the accounts for the monies received by them?
6. Whether the respondents 1 to 9 are liable to furnish the details of the Endowment Scholarship, Government Scholarship amounts received from the Govt. for the benefit of the school children?
7. Whether the respondents 1 to 9 are liable to furnish the statement of income and Expenditure for the year 1988 till the date of filing of the petition with auditor's report?
8. Whether the respondents 1 to 9 are liable to furnish the particulars of the property bequeathed by Padmasri Dr. Lazarus?
9. To what relief?

Dealing with the preliminary jurisdictional issue raised by the contesting respondents in the OP, the trial Court, relying on Ex.A.2 letter of appointment of Nemani Prudhviraj supported by the minutes of the meeting held on 01.02.2006, concluded that he became the Correspondent of the school, who was authorised to file suits against the respondents in the OP and held that the dispute would come within the purview of Section 23 of the Act of 2001.

Sri D.V. Sitharamamurthy, learned senior counsel appearing for the petitioners/respondents 1 to 8 in the OP, contended that this finding of the trial Court was wholly unsustainable on facts and in law. He would contend that the OP ought not to have been entertained at all.

Section 19 of the Act of 2001 deals with legal proceedings and states that the committee or any officer of a society, authorised in this behalf by its bye-laws, may bring or defend any action or other legal proceeding touching or concerning any property or any right or claim of the society and may sue and be sued in its name. Section 23 of the Act of 2001 deals with disputes regarding management and states

to the effect that in the event of any dispute arising among the committee or the members of the society, in respect of any matter relating to the affairs of the society, any member of the society may proceed with the dispute either under the provisions of the Arbitration and Conciliation Act, 1996 or may file an application before the District Court concerned.

The OP filed before the trial Court would therefore have to fall within the ambit of the aforestated legal provisions for it to be maintainable. The crucial requirement was that it should have been filed by the committee or a member or officer of the society. As Nemani Prudhviraaj styled himself as the Secretary-cum-Correspondent, he had to establish his status as such to prove his *locus* in terms of the aforestated legal position. Be it noted that N.C. Simons was not the petitioner in the OP and his son, Nemani Prudhviraaj, alone filed it independently. This Court is therefore not concerned with the alleged removal of N.C. Simons from the membership of the society or any dispute in relation thereto.

The crux of the matter in this regard was whether Nemani Prudhviraaj was a member or officer of the society. This aspect was considered by the trial Court only in the context of the appointment letter of Nemani Prudhviraaj supported by the minutes of the meeting whereby his appointment was approved. This letter of appointment was issued on the letter head of CBM High School, showing its Office at Door No.49-53-7/13, First Floor, Sampadha Galaxy, Balayya Sastry Layout, Visakhapatnam. This letter referred to the proceedings of the committee meeting in the context of the committee formed under Section 14 of the A.P. Societies Registration Act and under Section 24 Clause II of A.P. Education Act, 1982. The letter is extracted in its entirety hereunder:

‘C.B.M. HIGH SCHOOL

ESTD. 1836

VISAKHAPATNAM – 530 001

A Unit of the Vizagapatnam High School Society – Regd. No.3/25-26

Office: D.No.49-53-7/13, First Floor, Sampadha Galaxy, BALAYYA SASTRY LAYOUT,
Visakhapatnam-530 013.

(COMMITTEE FORMED UNDER SECTION 14 A.P. SOCIETIES REGISTRATION ACT AND UNDER SECTION
24 CLAUSE II OF A.P. EDUCATION ACT 1982.)

COMMITTEE MEMBERS

Rev.K.DANIEL GANDHI
B.Com, M.A, B.D, B.L

Dr.D.JOHN DEVADAS
M.Sc, Post M.Sc(Tech), Ph.D,

You are hear by authorized by the Management and the committee to Correspond with the Government and Represent the Society in all matters by Drawing Salary s and Wages and other Statutory Allowances from the Government and such other Institutions as and necessary when ever needed. AND FILE SUITS AGAINST DR.J.L. NAYAR, JYOTHI SWARUP NAIR AND OTHERS AND RECOVER ALL THE PROPERTIES OF THE SCHOOL.

4.

He also authorized to approach all Government and quasi Government whenever and wherever deemed necessary for the betterment of the school, file suits, sign all papers on behalf of the Society incur expenditure to approve of the society and also to maintain accounts of income and expenditure.

He is also here by authorized to appoint such other person or persons as teachers, clerks, menial staff with the approve of the committee. This is given with ful authority of the committee formed under Section 14 of the society. He shall hold office for 6 years. The Correspondent is here by authorized to propose and sign salary and wage bills to draw or pay such amounts to the persons entitled to and file suits against former management and recover all properties to the High School from them.

The proceedings are here with communicate to the individuals and requested to inform their acceptance.'

These are the two documents on the basis of which the trial opined that Nemani Prudhviraj could raise the dispute before it under Section 23 of the Act of 2001.

The revised Rules and Regulations of Vizagapatnam High School Society, 1976, were marked in evidence before the trial Court. Thereunder, the registered office of the society was the CBM High School, Main Road, Visakhapatnam-I, Andhra Pradesh.

In so far as 'Membership of the Society' is concerned, Rule 4 thereof reads as under:

'4. The society, which shall constitute the Board of Management of the C.B.M. High School, Visakhapatnam (hereinafter referred to as "the school"), shall be comprised of the following members:

- i) Eight Christians; at least five of whom shall be residents of the city of Visakhapatnam;
- ii) The Correspondent of the School, if such office does not rest in the Headmaster;
- iii) The Headmaster of the School (wherever the word "Headmaster occurs in these rules and regulations, it shall be understood to mean "Head Master or Headmistress").'

The other rules and regulations which are relevant for the purpose of this case are Rules 11 to 16, which read as under:

'OFFICE BEARERS:

11. The office-bearers of the society shall be a Chairman, a Secretary and a Treasurer all of whom shall be appointed by the society from among its members in the annual meeting. They shall be appointed for three years, but will be eligible for re-appointment, subject to the limitations of rule (7).

12. The Correspondent and the Headmaster of the School shall not be eligible to hold the office of Chairman or Treasurer of the Society.

13. In the absence of the Chairman, the members present at a meeting shall chose one of their number to act as Chairman of the meeting, in whom shall be vested all the powers of the Chairman for the conduct of the meeting.

14. In the event of an equality of votes, the Chairman shall have second or casting vote.

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MEETINGS:

15. Meetings of the Society shall be called by the Chairman as and when required, but not less than once every half-year.

16. The quorum for any meeting of the society shall be four members except at the time of election of members, when the quorum shall be FIVE members.'

It is therefore clear from the above revised rules and regulations of the Vizagapatnam High School Society that the society was to consist of eight Christians, of whom at least five have to be residents of Visakhapatnam. The Correspondent of the school, if he or she is not the Headmaster/Headmistress, would also be a member of the society along with such Headmaster/Headmistress. The eight members of the society, other than the Correspondent and the Headmaster/Headmistress, are to hold office for a term of three years and would be eligible for re-election for a second three-year term. After the expiry of the second term, such a member would not be eligible for re-election till one year has elapsed. The office bearers of the society are to be the Chairman, Secretary and Treasurer, all of whom are to be appointed by the society from amongst its members for a term of three years and they would be eligible for reappointment subject to the limitations of Rule 7, applicable to the abovementioned eight members of the society. Meetings of the society require a quorum of four members usually and only at the time of election of a member, the quorum is to be five members. Rule 32 decrees that that the society shall sue or be sued in the name of the Chairman. Rule 34 deals with the post of Correspondent and reads as under:

'34. The Correspondent of the School, who shall be a Christian, shall be appointed by the Society on such terms and conditions as may be decided upon from time to time. With the exception of the Headmaster, no member of the staff of the school shall be eligible for appointment as Correspondent. This shall not, however, preclude the Society's paying an honorarium to the Correspondent for his services if it deems it.'

The Correspondent is therefore to be appointed by the society itself and not by its managing committee. This required that a meeting of the society be convened with adequate quorum to decide upon and appoint the Correspondent. Significantly, the minutes of the meeting held on 01.02.2006 were not that of the society but only of the managing committee. At this meeting, Nemani Prudhviraaj was purportedly appointed as the Correspondent of the school and was authorized not only to manage the affairs of the school but also file suits, sign all papers on behalf of the society, etc. These minutes were therefore not in accordance with the revised rules and regulations. Appointment of the Correspondent could not have been done by the managing committee without calling for a meeting of the society. Had a meeting of the society been called for in this regard, the quorum required would have been four members. The minutes reflect that only three persons signed, ostensibly in the capacity of

managing committee members, and there was no participation by the ex-officio member, the Headmistress of the school, though she was very much available to participate in the meeting.

The argument of Sri K. Srinivasa Rao, learned counsel for the first respondent herein/petitioner in the OP, that under Section 14 of the Act of 2001 no quorum was required for the meeting is of no avail, as what was required under the rules and regulations of the society was that a meeting of the society should have been convened, and not a meeting of the managing committee, for the purpose of appointing the Correspondent.

That apart, the authority to sue or be sued in the name of the society was conferred upon the Chairman of the society alone under the rules and regulations. The same could not have been delegated to the Correspondent. The so called meeting convened by the self-styled members of the managing committee of the society on 01.02.2006 was therefore not in keeping with the rules and regulations governing the society. The letter of appointment issued on the strength thereof was therefore legally invalid, as it was signed by the very same three members of the managing committee and did not reflect that the society was ever informed or approved the appointment of Nemani Prudhviraj as the Correspondent.

Another aspect which requires to be noted in the context of this letter is that the office of the society was shown to be at Door No. 49-53-7/13, First Floor, Sampadha Galaxy, Ballayya Sastry Layout, Visakhapatnam-530013. But the rules and regulations of the society decreed that the registered office of the society was to be at the school itself. Sri K. Srinivasa Rao, learned counsel, fairly conceded that though Section 10 of the Act of 2001 mandated that change of the registered office must be intimated to the Registrar of Societies within 28 days, there is no record that the office location mentioned in Ex.A.2 had ever been intimated to the Registrar. This appointment letter and minutes of the meeting therefore commanded no credibility. However, the trial Court held in favour of Nemani Prudhviraj only on the strength of these documents and decided that he had the *locus standi* to bring the OP before it under Sections 19 and 23 of the Act of 2001.

There was, therefore, not a scrap of proof to show that Nemani Prudhviraj was lawfully appointed as the Correspondent of the school whereby he would have become a member of the society by virtue of such position. In the absence of the same, he had no *locus* to file the subject OP before the trial Court, as he was neither an officer nor a member of the society.

In this regard, reference may also be made to in the deposition of Nemani Prudhviraj in the OP, wherein he was examined as P.W.1. In his cross-examination,

he admitted that he had no personal knowledge of his appointment as Secretary-cum-Correspondent and that he came to know of the facts mentioned in his evidence-in-chief through the committee members, by name Gandhi, Wilson, J.D. Chakravarthi, Dr. Nageswara Rao, etc. He further admitted that he did not know who the Headmaster of the school was and that the school was being run by the respondents who had custody of its records also. In so far as the office address mentioned in Ex.A.2 is concerned, he denied the suggestion that he was a resident of the same house in the first instance but admitted that he was residing in M.V.P.Colony and that he had mentioned in his affidavit in lieu of chief examination that he was resident of the house bearing D.No. 49-53-7/13, First Floor, Sampadha Galaxy, Visakhapatnam. He also admitted that he did not mention in the main petition as to where from he was working and where his residence was. These admissions were enough to demonstrate that there was no real change in the registered office of the society and the rival group was conveniently holding its own meetings at the residence of Nemani Prudhviraj projecting the same as the office of the society. It is thus clear that there was no legally acceptable basis to support the claim of Nemani Prudhviraj that he had been appointed as the Correspondent of the school. In the light of the situation prevailing in the society and in the absence of a lawful appointment, Nemani Prudhviraj could not claim to be an officer or member of the society under the revised rules and regulations of 1976. Without being an officer or member of the society, Nemani Prudhviraj had no *locus* to maintain the OP before the trial Court under Sections 19 and 23 of the Act of 2001. The trial Court grossly erred in proceeding to adjudicate the dispute raised on merits in the light of this crucial jurisdictional aspect, which was unfortunately glossed over rather lightly by the trial Court. The subject OP was therefore not maintainable at the behest of Nemani Prudhviraj who was a stranger to the society.

The order passed by the trial Court in the said OP is therefore wholly without jurisdiction and is accordingly set aside on this short ground. Be it noted that this Court has not gone into the merits of the matter and the Civil Revision Petition is allowed only on the short ground that the subject OP was not maintainable.

W.P.No.3521 of 2012 was also filed by Vizagapatnam High School Society through Nemani Prudhviraj, who portrayed himself as the Secretary-cum-Correspondent. Therein, he sought a declaration that the action of the Commissioner of Police and the unofficial respondents therein in dispossessing the petitioner from Vizagapatnam High School Society and taking over its affairs was illegal and to issue a consequential direction to the respondents to restore the affairs of the petitioner society to its lawful management as declared in O.P.No.259 of 2006 on the file of the

learned

IV Additional District Judge, Visakhapatnam.

No interim orders were passed in this writ petition, perhaps in the light of the *status quo* order passed by this Court in the Civil Revision Petition.

In the affidavit filed in support of the writ petition, Nemani Prudhviraj did not explain as to how he along with his team gained control over the society and the school. In the light of the admission made by him before the trial Court in the OP that the respondents in the OP were running the school and had custody of its records, this aspect gained significance in terms of the prayer put forth by him in the writ petition. However, the affidavit was studiously silent on this aspect. His uncorroborated assertion that he was attending to the administrative affairs of the school and that at the interference of the unofficial respondents, the Commissioner of Police, Visakhapatnam, intervened and dispossessed him along with his team cannot be accepted. The CRP filed by the contesting respondents in the OP was pending before this Court and it cannot be believed that they would have quietly and without protest handed over control of the society and the school, along with the records, to Nemani Prudhviraj and his team. This writ petition appears to be a ploy to seek execution of the order passed by the trial Court in the OP without taking recourse to the lawful procedure. The writ petition is therefore devoid of merit.

In consequence, C.R.P.No.3371 of 2011 is allowed and W.P.No.3521 of 2012 is dismissed. Pending miscellaneous petitions, if any, in both matters shall stand closed in the light of this final order. In the circumstances of the case, there shall be no order as to costs.

SANJAY KUMAR, J

28th OCTOBER, 2015

PGS/Svv