

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.04.2016

Date of verdict: 29.04.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.33516 of 2015

S.Shanmugam

.. Petitioner

versus

1. The Registrar,
O/o.The Registrar of Societies,
Central Chennai,
Royapettah, Chennai-600 014.

2. M/s.The Suguna Vilasa Sabha (S.V.S.),
rep. by its Secretary,
No.57, Anna Salai, Chennai-600 002.

.. Respondents

Prayer: The Writ Petition has been filed under Article 226 of Constitution of India, praying for the issuance of a Writ of Declaration, to declare 2nd respondent's election dated 26.10.2014 as ultra virus, null and void.

For Petitioner : Mr.Haja Mohideen Gisthi for
Mr.K.Seetharam

For Respondents: : Mr.V.Jayaprakash Narayanan
Spl.G.P. for R1
Mr.Chitra Sampath for
M/s.Balakrishna Srinivasan
for R2

ORDER

This Writ Petition has been filed, praying for the issuance of a to declare 2nd respondent's election dated 26.10.2014 as ultra virus, null and void.

2. M/s.The Suguna Vilasa Sabha, second respondent herein, was originally formed in the year 1891 by one Mr.Sambanda Mudaliar. Later, during 1920, it was registered as a Social and Cultural Sabha vide Registration No.8/1920 and since then, it has been in the service of social welfare and socialization of its members. The

second respondent Sabha was administered by the Governing Body elected by its members following the by-laws as established in 1920, which have been amended from time to time. According to the petitioner, he joined as a member in the year 2008 and regularly paying subscription without any default thereof. The election of Governing Body is being conducted on annual basis and the last such election was conducted on 26.10.2014. The present Governing Body consists of one President, five Vice Presidents, two Joint Secretaries, one Treasurer and 20 Members, which includes 12 Executive Committee members and thus totalling one President and 29 members. However, in gross violation of the by-laws of the second respondent Sabha, the Governing Body has reduced the strength of members from 29 to 20, by making the number of Vice Presidents 2 from 5 and Executive Committee members as 5 from 12. Aggrieved by the same, the petitioner and other members made a representation dated 13.10.2014 to the second respondent. However, the second respondent conducted the election on 26.10.2014 based on amended by-laws. According to the petitioner, the first respondent has not approved the amendments and not taken any action to stop the illegality committed by the second respondent despite his representation dated 24.10.2015. The petitioner apprehends that there should be collusion between the first and second respondents. Hence, the petitioner has come forward with the present writ petition, praying to declare the second respondent's election dated 26.10.2014 as ultra vires, null and void.

3. When the writ petition is taken for consideration, the learned counsel appearing for the petitioner would submit that as per by-law of the second respondent, right from its inception, the strength of its Governing Body is 29 members excluding President, while so, the second respondent has reduced the said strength from 29 members to 20 contrary to the by-laws. He pointed out that this was objected by the petitioner and other members, however, they were made to believe that the by-laws were amended and as per the amended by-laws, the strength of the Governing Body is reduced. However, later the petitioner came to know that the amended by-laws were not registered by the first respondent. Therefore, the learned counsel would submit that the election conducted on 26.10.2014 based on the amended by-laws, which were not registered before the first respondent, is per se illegal and liable to be declared as null and void.

4. In this regard, the learned counsel relied upon a judgment reported in "1997(1) SCC 356 (Goa State Cooperative Bank Ltd., versus Pedne Taluka Prathamik Shikshak Pat Saunsta Ltd. and others)", wherein, in identical situation, the Hon'ble Supreme Court held that unless the amended by-laws are approved by the Registrar, the same do not become effective and therefore, election held without approval of the by-laws would be invalid and therefore, directed the respondents therein to conduct fresh elections in accordance with by-laws. Thus the learned counsel for the

petitioner, by relying upon the above said decision, submitted that in the present case also, even before the approval of the by-laws by the Registrar, the election was conducted by the second respondent Sabha, therefore, the said election has to be held as ultra virus, null and void.

5. Countering the above submissions, the learned counsel appearing for the second respondent Sabha, by filing a counter affidavit, would submit that the writ petition per se is not maintainable since it has been filed highlighting the internal affairs of the second respondent Sabha and no fundamental or statutory right of the petitioner has been violated by the respondents. He would further submit that the decision to amend the by-laws was taken as early as in the year 2013 in the annual general meeting held on 25.09.2013, wherein, it was decided to increase the period of office from one year to two years and the number of posts of Vice President and members to be modified and also passed a resolution to that effect, and the petitioner was also a party to the said resolution. Pursuant to the said decision, in the month of September, 2013 a by-law subcommittee was formed, which prepared the details of the amendment and submitted the same to the executive committee. In its meeting held on 22.07.2014, the executive committee has approved the amended by-laws and decided to place it before the General Body by calling for an extraordinary general body meeting on 24.08.2014. Accordingly, notice of extraordinary general body meeting was issued to all the members including the petitioner on 6.8.2014 by enclosing the proposed amended by-laws and invited the members to attend the meeting on 24.08.2014. The petitioner attended the meeting held on 24.8.2014 along with one Mr.Raja and Ranka and other members. In the said meeting, the amended by-laws were unanimously approved by the members and it was decided to place the same before the Registrar of Societies for approval. On 15.09.2014, the amended by-laws were placed before the Registrar of Societies and necessary payments were also made. On 01.10.2014, notice was issued to all the members for the annual general meeting to be held on 27.10.2014 along with the election schedule. On 16.10.2014, the list of valid nominations was declared and on 26.10.2014, the annual general meeting was held, election was held, results were declared and elected office bearers assumed their office. In the said meeting, the petitioner had also attended along with his members, namely, S.R.Raja, Ravi and Ranka and none of them had protested about any irregularity or impropriety in regard to the elections, period of office, number of posts or any other issue.

6. The learned counsel appearing for the second respondent would further submit that the petitioner had been a party to all the decisions that had taken by the second respondent including the amendment of the by-laws and he had also participated in the election held on 26.10.2014, but not raised any objection. Therefore, he would submit that having participated in all the proceedings including the so-called election, dated 26.10.2014, the

petitioner is estopped from raising any objection as to the validity of the said election. The petitioner has not sent any representation or objection to the society or to the Registrar with regard to the impropriety of the amendment, but filed the present writ petition. The second respondent has filed the amended by-laws for approval immediately after passing the special resolution, but the orders are yet to be passed by the first respondent. Therefore, according to the learned counsel, once the amended by-laws are registered, the same will take effect from the date of passing of the special resolution and not from the date of registration of the by-laws as contended by the petitioner. The members of the society are governed by the by-laws and the registration of the by-laws is only a procedural and not substantial, affecting the inter se rights of the members of the second respondent. In support of his submissions, the learned counsel relied upon a decision of this Court, reported in "2010(5) CTC 481 (The Tamil Nadu Evangelical Lutheran Church, rep. by its present Secretary, Trichy versus Daniel Shanmugam and others)", wherein, it has been held as under in para 22:

"22. A combined reading of Section 12(3) and 12(4) of the Tamil Nadu Societies Registration Act, 1975 would make it clear that registration is a statutory requirement for the purpose of amending by-law, but when the statutory requirements are complied with, the resolution is given effect from the date of its passing. After the amended by-law is presented to the registering authority, the registrar has a legal obligation to find out as to whether the proposed amendment of by-laws are contrary to the provisions to the Act and Rules made thereunder. Therefore, if and when the registering authority raised objections to the proposed amendment on the grounds it is contrary to the provisions of the Act and rules, certainly the proposed amendment cannot be given effect. As long as such objections are not raised by the registering authority, when the proposal for registration of the amendment is pending for long years, it cannot be said that the proposed amendment cannot be give effect to, if it is not contra to the provisions of the Tamil Nadu Societies Registration Act, 1975 and the rules made thereunder. The combined effect of Section 12 (3) and 12(4), in my considered view means that unless and until the registering authority raises objections to the validity of the proposed amendment, on the ground that it is contra to the provisions of the Tamil Nadu Societies Registration Act, 1975 and Rules made thereunder, any act done by the Society in the interregnum period cannot be said to be invalid merely because

the formality of registration has not been complied with. ..."

7. Relying upon the above, the learned counsel for the second respondent would submit that after passing the resolution in the annual general meeting, the second respondent presented the amended by-laws before the first respondent for registration and unless the Registering Authority raises objection to the proposed amendment on the ground that the proposed amended by-laws are contrary to the provisions of the Act, such amended by-laws cannot be given effect to, but in the present case, no such objections were raised by the Registering Authority regarding the proposed amended by-laws, therefore, there is no impediment for the second respondent to conduct the elections as per the amended by-laws and hence, the so-called election is in legally valid as it has been conducted as per amended by-laws.

8. He also relied upon a decision of the Hon'ble Supreme Court reported in "(2006) 11 SCC 464 (U.P.Jal Nigam and another versus Jaswant Singh and another)", wherein, the Hon'ble Supreme Court has held that when a person is not vigilant of his rights and acquiesces with the situation and the acquiescence prejudices, or there is a change of position on the part of the party allegedly violating the rights, such person's writ petition cannot be heard after the delay on the ground that the same relief should be granted as was granted to persons similarly situated, but who were vigilant of their rights. Relying on this, the learned counsel would submit that having participated in all the meetings including the election conducted on 26.10.2014, the petitioner is estopped from raising objections by way of present writ petition.

9. Therefore, with above submissions, the learned counsel sought for dismissal of the writ petition.

10. Heard the learned counsel appearing for the parties and perused the entire materials available on record.

11. The main contention of the learned counsel for the petitioner is that the proposed amended by-laws cannot be given effect as they were not approved and registered by the Registrar, but in the present case, even before the registration of the proposed amended by-laws, the second respondent Sabha has conducted the election based on the said proposed by-laws and hence, the said election has to be declared as null and void. In support of his submission, the learned counsel relied upon a decision of the Hon'ble Supreme Court reported in 1997(1) SCC 356 (Goa State Cooperative Bank Ltd., versus Pedne Taluka Prathamik Shikshak Pat Sauntha Ltd. and others)", wherein, in identical situation, the Hon'ble Supreme Court directed the respondents therein, to conduct fresh elections in accordance with by-laws. But in my considered opinion, the said decision will not be applicable to the facts of

the present case since the issue involved in the above said decision was pertaining to the provisions of Multi-State Co-operative Societies Act, 2002, but the present issue is pertaining to the provisions of the Tamil Nadu Co-operative Societies Act. As per Section 11 of the said Multi-State Co-operative Societies Act, 2002, amendment of by-laws of a multi-state co-operative society shall become valid only if it is registered under the said Act. Further, as per Section 12 of the Multi-State Co-operative Societies Act, 2002, by-laws of the society will come into operation only from the date on which, it is registered. But whereas, the society registered under the provisions of the Tamil Nadu Societies Registration Act, 1975 is concerned, once the Registrar is satisfied that any amendment of memorandum or the by-laws is not contrary to the provisions of the Act or Rules made thereunder, he can register the amendment and such registration shall take effect from the date of passing of the special resolution. Therefore, there is no obligation on the second respondent to proceed in accordance with the amended by-laws only after their registration. Further, in the present case, it is not in dispute that the Registering Authority has not raised any objection with regard to the proposed amended by-laws on the ground that they are contrary to the provisions of the Act. In fact, the decision to amend the by-laws was taken as early as in the year 2013 in the annual general meeting held on 25.09.2013, wherein, it was decided to increase the period of office from one year to two years and the number of posts of Vice President and members to be modified and also passed a resolution to that effect, and the petitioner was also a party to the said resolution. Pursuant to the said decision, in the month of September, 2013 a by-law subcommittee was formed, which prepared the details of the amendment and submitted the same to the executive committee. In its meeting held on 22.07.2014, the executive committee has approved the amended by-laws and decided to place it before the General Body by calling for an extraordinary general body meeting on 24.08.2014. Accordingly, notice of extraordinary general body meeting was issued to all the members including the petitioner on 6.8.2014 by enclosing the proposed amended by-laws and invited the members to attend the meeting on 24.08.2014. Admittedly, the petitioner attended the meeting held on 24.8.2014 along with one Mr.Raja and Ranka and other members. In the said meeting, the amended by-laws were unanimously approved by the members and it was decided to place the same before the Registrar of Societies for approval. On 15.09.2014, the amended by-laws were placed before the Registrar of Societies and necessary payments were also made. On 16.10.2014, the list of valid nominations was declared and on 26.10.2014, the annual general meeting was held, election was held, results were declared and elected office bearers assumed their office. Therefore, as rightly submitted by the learned counsel for the second respondent, the election was conducted as per the amended by-laws of the second respondent which were duly approved by all its members in the annual general meeting held on 25.09.2013 itself. In fact, a resolution passed by the overwhelming majority, is binding on all

the members and the petitioner, admittedly, being a member of the second respondent, has to abide by it. However, since the registration is a statutory requirement for the purpose of amending by-laws, the second respondent after amending the by-laws, presented the same to the Registering Authority. No doubt it is true that the matter is pending with the Registering Authority for approval. However, it is to be noted that the Registering Authority has not so far raised any objection to the proposed amendment on the ground that they are contrary to the provisions of the Act and Rules. Therefore, in my opinion, as long as there was no objection from the Registering Authority that the proposed amendment to the by-laws is contrary to the provisions of the Act and Rules, there was no impediment for the second respondent in conducting the election as per the proposed amended by-laws and as such, no irregularity or illegality can be found in holding the election by the second respondent on 26.10.2014. Further, for the same relief as sought for in the writ petition, another member, namely, S.Ravi has filed a suit in O.S.No.5466 of 2015 before the V Assistant City Civil Court, Chennai and the said suit is pending. Therefore, there cannot be parallel proceedings.

In the light of the above discussion, I do not find any merits to entertain the writ petition. Accordingly, the Writ Petition fails and it is dismissed. No costs. Connected MPs are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

suk

TO

The Registrar,
O/o.The Registrar of Societies,
Central Chennai,
Royapettah, Chennai-600 014.

1 CC TO M/s. K.Seetharam, Advocate, Sr. 27818
1 cc to Government Pleader, Sr. 28009

W.P.No.33516 OF 2015

UG (CO)
aa11/05/2016