

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2017

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No. 13474 of 2016

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Dr. Joseph Verghese

.. Petitioner

Versus

1. The Inspector General of Registration
O/o. The Inspector General of Registration
No.100, Santhome High Road
Chennai - 600 028
2. The District Registrar
Registrar of Societies
O/o. the Registrar of Societies
Vellore Region, Vellore Fort
Vellore - 632 004
3. Indian Orthodontic Society
represented by its Secretary
Sree Balaji Dental College
Velacherry Road, Narayanapuram
Pallikaranai, Chennai - 600 100
4. Dr. K. Gangadhara Prasad
President
Indian Orthodontic Society
Sree Balaji Dental College
Velacherry Road, Narayanapuram
Pallikaranai, Chennai - 600 100
5. Dr. C. Deepak
Secretary
Indian Orthodontic Society
Sree Balaji Dental College
Velacherry Road, Narayanapuram
Pallikaranai, Chennai - 600 100
6. Dr. K. Balaji
Treasurer
Indian Orthodontic Society
Sree Balaji Dental College

Velacherry Road, Narayanapuram
Pallikaranai, Chennai - 600 100

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing the first and second respondent to declare and to pass orders annulling all the meeting conducted subsequent to the dissolution of the "Indian Orthodontic Society" published in the Gazzette Publication of Tamilnadu dated 16.03.2011 and Publication from the Government of Karnataka dated 02.12.2015 respectively and also to pass orders for not conducting any future meeting in the name of the said society.

For Petitioner : Mr. S. Haja Mohideen Gisthi

For Respondents : Mr. S. Rajeswaran
Special Government Pleader for RR1 and 2

Mr. V.T. Gopalan, Senior Advocate
for Mrs. B. Saraswathi for R4

Mr. S.R. Rajagopal
for Mr. V. Gowtham for RR5 and 6

ORDER

The petitioner seeks for issuing a Writ of Mandamus directing the first and second respondent to declare and to pass orders annulling all the meeting conducted subsequent to the dissolution of the "Indian Orthodontic Society" published in the Gazzette Publication of Tamilnadu dated 16.03.2011 and Publication from the Government of Karnataka dated 02.12.2015 respectively and also to pass orders for not conducting any future meeting in the name of the said society.

2. In the affidavit filed in support of the writ petition, it was contended by the petitioner that the second respondent society was established in the year 1965 and registered as per the provisions of the Tamil Nadu Societies Registration Act on 23.03.1992 in the office of the Registrar of Societies, Vellore. According to the petitioner, he is one of the members of the said society from 1988 and was also

functioning as its Executive Member for various periods from 1999-2000. The petitioner also held the post of Ex-Officio EC Member (IBO Chairman) in the year 2004-2005 and thereafter he was elected as President in the election held on 01.12.2012 for the periods from 2012-2013 on various spells. According to the petitioner, the second respondent society did not function effectively from the year 2009 and it remained dormant without much activity. Since the society did not comply with the mandatory requirements such as filing of annual returns etc., the registration of the society was cancelled on 14.12.2010. While so, an identical society called "Indian Orthodontic Society" was registered as per the Karnataka Societies Registration Act on 06.10.2009 in the office of the Registrar of Societies, Davangere, however, it was subsequently decided to close the society at Davangere and a letter dated 11.05.2015 was submitted for closure of the society. Based on the same, the Registrar of Societies, Davangere passed an order dated 02.12.2015 dissolving the society. Thus, according to the petitioner, a society which was founded in the same name one at Vellore, Tamil Nadu and the other at Davangere, Karnataka was closed and the society did not function. However, according to the petitioners, the respondents 4 to 6 impersonating themselves as Office Bearers of the defunct society and conducting elections and meetings as if the society is functioning. The respondents 4 to 6, according to the petitioner, have conducted a meeting on 05.03.2016 in which the fourth and fifth respondent called themselves as President and Secretary of the said society. According to the petitioner, before closure of the Society at Vellore, he functioned as President of the Society and it is not known as to how the fourth and fifth respondents could claim themselves as President and Secretary and conduct a meeting on 05.03.2016. In such circumstances, the petitioner is before this Court with a prayer to direct the

respondents 1 and 2 to cancel and or annul all the meetings conducted subsequent to the dissolution of the "Indian Orthodontic Society" and also to pass orders for not conducting any future meeting in the name of the said society.

3. Mr. Haja Mohideen Gisthi, learned counsel for the petitioner would vehemently contend that the society was dissolved on 02.12.2015 and therefore, any meeting conducted by the respondents 4 to 6 is invalid. However, on 12.12.2015, an Annual General Body meeting was conducted in which Vice President and 25 Executive Members were elected. The election of the Vice President and Executive Members to a defunct society will not have the force of law besides that their election is arbitrary and unlawful. Further, on 05.03.2016, Executive Committee Meeting meeting was conducted at Amirtsar. Thus, it is mainly contended by the learned counsel for the petitioner that when the society itself was dissolved on 02.12.2015, no one is authorised to conduct any meeting or to elect any person to the post of President, Vice-President or Executive Member and it amount to violation of the provisions of Societies Registration Act.

4. On the contrary, the learned Special Government Pleader appearing for the respondents 1 and 2, relying on the counter affidavit of the second respondent, would contend that the society which was registered in the office of the second respondent has not been dissolved on 02.12.2015. A letter dated 06.12.2015 was sent by the Secretary of the society enclosing the audited balance sheet for the year 2014-2015 and requested to activate the registration by condoning the delay. However, such request has not been accepted as the society has not presented the annual returns periodically. It is further stated that even

though the society did not file the annual returns for more than 3 consecutive years, a notice dated 14.12.2010 under Section 44 (3) of the Act was published in the Tamil Nadu Government Gazette on 16.02.2011, however, the notice under Section 44 (4) of the Act has not been published. Thus, the society is deemed to be dissolved and shall not function only after publication of the notice under Section 44 (4) of the Act. In other words, no order of cancellation of the society has been made on 14.12.2010 as claimed by the petitioner. The society has not been struck off from the register and dissolved as per the Act. Further, the name of the society has not so far been struck off from the Registrar of Societies.

5. Mr. V.T. Gopalan, learned Senior counsel appearing for the fourth respondent would contend that it is true that the third respondent society was originally registered at Vellore, Tamil Nadu. Subsequently, in the year 2009, it was decided by the members to part-operate the third respondent society from Davangere, Karnataka and accordingly, the operations of the third respondent society has been part-migrated to Davangere, Karnataka and it was registered with the Registrar of Societies at Davangere on 06.10.2009. According to the learned Senior counsel, the society registered at Vellore is distinct and different from the society registered at Davangere and they are governed by dissimilar constitution/ bye-laws and have been registered and/or governed by different State legislatures. It is further submitted that inspite of maximum efforts to streamline the operations of the society at Vellore and Davangere, the members of the society felt it practically unachievable and therefore, the society at Davangere was dissolved and all operations of the society were carried out at Vellore, Tamil Nadu. Therefore, according to the learned Senior counsel, the society at Vellore was not dissolved or

become defunct as alleged by the petitioner and the third respondent society continues to be in existence.

6. I heard the counsel on either side and perused the materials placed on record. On perusal of the entire records, including the counter affidavit of the respondents, it is evident that the third respondent society is functioning as on date and it was not struck off from the register maintained by the second respondent. It is specifically pointed out that in the counter of the second respondent that the notice as contemplated under 44 (4) of the Act has not been published in the Government Gazette and in the absence of such publication, the society is deemed to be functioning. When the Government has not passed any order in the official gazette dissolving the third respondent society as contemplated under Section 44 (4) of the Act, it cannot be presumed that the third respondent society is dissolved.

7. According to the fourth and fifth respondents, in the counter, the petitioner, during his tenure as President has committed several irregularities and therefore apprehending disciplinary action to be taken against him has filed the present writ petition with an ulterior motive. Such an averments made by the respondents 4 and 5 in the counter affidavit cannot be gone into by this Court as they are disputed questions of fact. In any event, the relief sought for in this writ petition cannot be granted by this Court. Further, the third respondent society has been declared defunct or not cannot also be gone into by this Court and it is a matter for evidence before the competent civil court. Therefore, if the petitioner is aggrieved by any of the decisions taken by the respondents 4 to 6 for and on behalf

of the third respondent society, either by convening meeting or conducting an election, it is open to the petitioner to approach the competent Civil Court for redressing his grievance and this writ petition is not maintainable.

8. With the above direction, the writ petition is disposed of. No costs. Consequently, connected WMP Nos. 11832 to 11834 of 2016 are closed.

30.01.2017

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Index : Yes / No

Internet : Yes / No

To

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No.100, Santhome High Road
Chennai - 600 028
2. The District Registrar
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B. RAJENDRAN, J

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