

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.9091 of 2010
and W.M.P.No.1 of 2010

A.Marimuthu

...Petitioner

Vs.

1. The General Manager,
Southern Railway, Chennai-3
 2. The Inspector General of Registration,
Chennai - 28.
 3. The Chief Security Commissioner,
RPF, Southern Railway, Chennai -3.
 4. The Railway Protection Force Members
Association, Rep. By D.K.Bakthan,
Southern Railway, Chennai.
- ... Respondents

Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents 1 and 2 from in any manner permitting the 4th respondent from the usage of Registration No.165/73 without appropriate authority for the same as per the Societies Registration Act and to pass orders.

For Petitioner : Mr.L. Chandrakumar
for Mr.B.Chandran
For Respondents 1 & 3 : Dr.S.R.Sundaram
For 2nd Respondent : Mr.S.Diwakar,
Special Government Pleader

For 4th Respondent : Mr.M.Balasubramanian

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O R D E R

The petitioner has come forward with this Writ Petition seeking to forbear the 1st and 2nd respondents from in any manner permitting the 4th respondent using Registration No.165/73 without appropriate authority for the same as per the Tamil Nadu Societies Registration Act, 1975.

2. According to the petitioner, he is a member of All India RPF Association, Southern Railway, Chennai Division, which started functioning since 1999. The activities were well within the Guidelines, which are issued by the authorities and Association. While so, under the guise of Southern Railway Protection Force, an Association bearing Regn.No.165/73, which was initially a recognised one by the administration, was withdrawn as early as 1985, and started functioning as per the directions of the then General Manager, who had failed to consider the legal position as well as the dictum of the land coupled with pendency of litigation, which culminated in filing of a suit in O.S.No.6016/2001 on the file of the City Civil Court, Madras and an ex-parte decree was obtained.

3. Pursuant thereto, an Execution in E.P.No.1001/2004 came to be filed, dehors E.A.No.4448/06 in E.P.No.1593/05 in the above O.S. Subsequently, C.S.No.124/06 came to be filed before this Court seeking to set aside the exparte decree inter alia on the ground that the Association has become defunct from 1985.

4. It is the case of the petitioner that M/s.All India RPF Association, Southern Railway, came into being from the parent body of All India Railway Protection Force Association and that as per the RPF Rules, 1987, only one Association in the entire then Nine Zonal Railways is permissible and that under the guise of yet another Association that too in the name and style with the registration number of a defunct, unrecognised and lapsed Association cannot be allowed to function. It is his further case that the recognition is contrary to the provisions of the Tamil Nadu Societies Registration Act, 1975 and there is no compliance of Section 44 of the said Act. Hence, he prayed to set aside the order of the 3rd respondent.

5. The 4th respondent Association filed a counter affidavit, wherein, it is stated that their Association was formed in the year 1973 and it was duly registered under the Societies Registration Act, 1975. According to the 4th respondent, several members of the Railways have become members of their Association and the 4th respondent approached the Civil Court for conducting elections. Due to various judicial proceedings and administrative reasons, the Railway Administration directed the 4th respondent not to function and kept the election in abeyance. After permission was granted, the 4th respondent approached the Government for restoring the Registration and to permit them to function by allotting the very same Registration No.165/73. It is stated that the petitioner herein had also approached the Civil Court and that as per Ex.A1, it is clear that pursuant to the directions of the Railway Administration, the 4th respondent would not function.

6. According to the 4th respondent, the Government has considered the circumstances that prevailed between 1985 and 1999 and taking into account the provisions of the Act, it permitted them to function and Registration No.165/73 granted earlier was restored. It is his further case that no prejudice would be caused to the petitioner, if their Association is allowed to function and that it is only an age-old Association. When the petitioner is armed with the judgment and decree of the Civil Court, which has considered the various disputed questions of the Act, he has no right to question the functioning of the 4th respondent and the Registration No.165/73 that has been restored.

7. Learned counsel appearing for the petitioner submitted that the 4th respondent Association has become defunct and they cannot use the Reg.No.165/73. He further submitted that once the Registration Number of a Society is struck down as per Section 44 of the Tamil Nadu Societies Registration Act, 1975 and when the same has been published in the Gazette in terms of the provisions of the Act, the question of restoration does not arise. According to him, the Association to which the petitioner belongs, has been recognised and there is only one Association that can be recognised.

8. Learned counsel for the petitioner drew the attention of this Court to Sections 16, 44(5) and 44(6) of the Tamil Nadu Societies Registration Act, 1975, which are extracted below:

16. Accounts and Audit : (1) Every registered society shall keep proper books of accounts and at the expiration of each financial year, prepare a receipt and expenditure account and a balance sheet and shall cause them to be audited by an auditor or by two or more members of the registered society (not being members of the committee), appointed by the registered society and possessing the prescribed qualifications.

(2) The auditor of the members appointed under sub-section (1) shall have access to all the books and accounts of the registered society, and shall examine the receipts and expenditure account and the balance sheet and verify them with the accounts and vouchers relating thereto, and shall either sign them as found by him or them to be correct, duly vouched, and in accordance with law, or

specially report to the registered society in what respects he finds or they find them to be incorrect, unvouched, or not in accordance with law.

44. Removal of defunct registered societies:

....

(5)(a) If a registered society or any member or creditor thereof feels aggrieved by the same of the registered society having been struck off the register, such registered society, member or creditor may, within such period as may be prescribed from the date of the publication in the Tamil Nadu Government Gazette of the notice of striking off the name of the registered society, appeal-

(i) Where the name of the registered society is struck off by the Inspector-General of Registration, to the Government;

(ii) in any other case, to the Inspector-General of Registration.

5(b) The Government or the Inspector-General of Registration on being satisfied that the registered society was, at the time its name was struck off, carrying on business or in operation or otherwise that it is just and equitable that the name of the registered society be restored to the register, may order such restoration.

44(6) If a registered society or any member or creditor thereof feels aggrieved by the order of the Government or the Inspector-General of Registration under sub-section (5), the Court may, on the application of such registered society, member or creditor, made within such period as may be prescribed from the date of the receipt by such registered society, member or creditor, of such order, and on being satisfied that it is just and equitable that the name of the registered society be restored to the registrar, order such restoration.

9. Heard the learned counsel on either side and perused the material documents available on record.

10. As per the provisions of the Act read with the Rules framed thereunder, after the registration of a Society, it will have to submit the records periodically to the Registrar of Societies. Even, if the Society is not carrying on business for whatsoever the reason, it has to necessarily submit the records to the Registrar of Societies within a period of three years from the date it stopped functioning. Admittedly, in this case, no steps have been taken within a period of three years from the date of non-functioning and therefore, the Association became defunct.

11. Once the Registration of a Society has been set aside by the Inspector General of Registration, the Government Authorities have no power to restore the same on file and permit them to function. The 4th respondent has no power to obtain fresh registration with the same Registration number in terms of the Act, stating the reasons therefor. However, by furnishing the fresh Registration number, after going through the bye-laws and other documents, the 4th respondent may be permitted to function with a new Registration number, if there are no legal impediments.

12. The Railway Authorities have prohibited the petitioner from functioning and that the petitioner did not function between 1985 and 1989 and after obtaining permission, they started to function and approached the Government to restore Registration No.165/73, which cannot be accepted, as the Government gave directions not to allow the 4th respondent Association to function.

13. The contention of the official respondents is that the judgment and decree of the Civil Court will not help the petitioner to state that the Association's Registration No.165/73 has been restored. It is their further contention that the petitioner is not entitled to avail the benefit of the old Registration No.165/73, as the Civil Court has not considered as to whether the suit itself is valid or not, due to the fact that the suit has not been filed within a period of three years.

14. Further, this Court has not rendered any finding in this writ petition, referring to the said judgment and decree of the Civil Court. It is only an observation for the Government to act lawfully, as a defunct Association cannot be restored. I find much force in the contentions of the learned counsel for the petitioner. Hence, this Court feels it appropriate to allow the Writ Petition and it is accordingly, allowed as prayed for. However, it is made clear that the 4th respondent is permitted to file an application for fresh registration number from the

Registrar of Societies or the authority competent under the Tamil Nadu Societies Registration Act, 1975, provided the same registration name is not allotted to any others.

No costs. Consequently, connected W.M.P.No.1 of 2010 is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

smn/aeb

To:

1. The General Manager,
Southern Railway, Chennai-3
2. The Inspector General of Registration, Chennai - 28.
3. The Chief Security Commissioner,
RPF, Southern Railway, Chennai -3.
4. The Railway Protection Force Members
Southern Railway, Chennai.

+1cc to Mr.L.Chandra kumar, Advocate, S.R.No.78198
+1cc to Mr.S.R.Sundaram Advocate, S.R.No.78219
+1cc to Mr.M.Balasubramanian, Advocate, S.R.No.78053
+1cc to the Government Pleader, S.R.No.79014

W.P.No.9091 of 2010

RRK(12/12/2017)

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