

THE HON'BLE SMT JUSTICE T. RAJANI

APPEAL SUIT No.1326 of 1996

JUDGMENT:

This appeal is preferred by the appellants, who are the plaintiffs in the Court below, aggrieved by the judgment and decree of the Subordinate Judge, Nellore in O.S.No.17 of 1986 dated 10.05.1993 by virtue of which the suit was dismissed.

2. In a nutshell, the facts, so far as are necessary for deciding the issues involved in this appeal, are that the defendant No.1 is a body registered under Societies Registration Act to impart education to students. It made a memorandum of association and bye-laws. Later as per the directions of S.V. University, the memorandum of association was amended by reducing the number of committee members from 14 to 11. The plaintiffs are the old students of the first defendant college, who have a claim to become members of the committee. They filed the suit questioning the validity of the amendments. The entire history, from the inception of the institution, that was mentioned in the plaint is felt as not required to be mentioned herein, as it does not have any bearing on the reliefs claimed by the plaintiffs in the suit.

3. The important grounds on which the appeal is filed are as follows:

The Court below erred in dismissing the suit for want of *locus standi* by the plaintiffs. It failed to note that all the plaintiffs were old boys of the first respondent institution and the name of the first

plaintiff appeared in the voters list prepared earlier. The Court below failed to consider Exs.A13 to A16 while deciding the issue of *locus standi* of the third plaintiff. It erred in holding that the right of patron to nominate representatives to the committee is a creature of the committee. It failed to note that the right of a patron to nominate representatives to the committee is not as a Raja or Jamindar but only as a patron under the bye-laws and constitution of the institution. The Court below erroneously addressed itself to decide the rights of the patron to nominate members in the capacity of Raja of Venkatagiri rather than patron under its constitution. The Court ought to have held that the right to nominate survives on successor in interest under the bye-laws of the institution.

The Court below erred in relying on Exs.B39 to B49 in deciding the right of patron to nominate representatives to the committee and misconstrued the claim of the plaintiffs. The Court below failed to note that the amendments under challenge were not passed by the required majority of 3/4th on 09.04.1983 in conformity with the mandatory procedure of the constitution of the first defendant and erred in holding that there is no legal infirmity either in the amendment of the constitution or its ratification. The Court below failed to note that the guidelines of the University are in relation to governing body which is different and distinguishable from the Managing Committee under the bye-laws of the first defendant institution. The Court below erred in holding that since the third plaintiff submitted to the jurisdiction of the election authority in regard to his enrollment and exclusion from the voters list, he is estopped from questioning the validity of the said amendment.

The Court below failed to note that the amendments under challenge are contrary to the bye-laws of the constitution of the first defendant and are vitiated by non-compliance of mandatory requirement and procedure. It failed to note that the meeting in which the impugned amendment was passed is neither duly convened nor constituted and there is no valid notice and quorum in accordance with the bye-laws. The Court below erred in holding that the university guidelines support the amendment and the amendments were necessitated by the legal exigencies. The Court below failed to note that the amendments under challenge are vitiated in law for non-compliance of the requirement under the Societies Registration Act and as such, they are liable to be declared *void ab initio*. The Court below failed to note that the strength of the managing committee on the date of the impugned amendment is not sufficient and valid to bring such amendment without filling the vacancies.

4. Counsel appearing for the respondents was not present on the date of hearing. The counsel for the appellants filed his written arguments apart from submitting short oral arguments. The written arguments are also on the same lines as that of the grounds of the appeal.

During oral arguments, the counsel submitted that the relief of declaration sought by the plaintiffs does not survive and hence the decision can be on the other reliefs claimed in the suit. But, in fact, the declaration sought for is to declare the new constitution or amended constitution and rules as invalid, inoperative, void and binding on the plaintiffs. The other reliefs sought for are consequential

permanent injunction to restrain the defendants from holding the elections for the electoral college of old boys as per the proposed new rules formulated after September 1975, and for a mandatory injunction directing to constitute a new committee of the first defendant as per the rules existing by September 1975 with 4 nominated members of the Raja of Venkatagiri, 4 members elected from the electoral college of old students as per the valid list prepared under the then rules and bye-laws existing by September 1975, if necessary by appointing an officer of the Court or Commissioner.

5. The second relief, as rightly framed in the plaint, which is for permanent injunction, is consequential to the relief of declaration. Mandatory injunction is also a consequential relief to the relief of declaration. When the counsel submitted that the relief of declaration does not survive, the other two reliefs, which are consequential to the relief of declaration also does not survive. Hence, the submission made by the counsel for the appellant does not seem to be well conceived, as it is only on the declaration that the amended constitution and rules are invalid, that the plaintiffs would be entitled for a permanent injunction restraining the defendants from holding elections and also for mandatory injunction directing to constitute the new committee as per the old rules. Hence, this Court proceeds to decide the appeal with regard to the all the three reliefs claimed by the plaintiffs, though with a strong doubt whether it would be of any help to either of the parties, who might have been active in the year 1986, when the suit was filed, may not, in all probability be active as on date.

6. The Court below has framed as many as 10 issues covering all the aspects urged by the plaintiffs in the suit, which include the issue of *locus standi* of the plaintiffs to file the suit and the validity of the amended constitution and rules. The issues framed on Court fee and limitation were cryptically decided, considering that no material was placed with regard to the propriety of the Court fee and considering that the defendants failed to establish that the suit is barred by time. .

7. However, broadly, the points that remain to be dealt with at the stage of this appeal are three:

1. Whether the amendments made by the committee in respect of the constitution and bye-laws are valid.
2. Whether the plaintiffs have *locus standi* to file the suit.
3. To what relief are the plaintiffs entitled.

POINT No.1:

8. This point is taken up, first, as the conclusion on this point would decide the *locus standi* of the plaintiffs. Defendant No.1 is an institution registered under the Societies registration Act, 1860 (for short 'the Act'). Sections 1 and 2, which are relevant, are extracted hereunder for ready reference:

1. Societies formed by memorandum of association and registration: – Any seven or more persons associated for any literary, scientific, or charitable purpose, or for any such purpose as is described in Section 20 of this Act, may, by subscribing their names to a Memorandum of Association, and filing the same with the Inspector General of Registration form themselves into a society under this Act.
2. Memorandum of association: – The Memorandum of Association shall contain the following things (that is to say) –
the name of the society;

the objects of the society;

the names, addresses, and occupations of the Governors, Council, Directors, Committee or other governing body to whom, by the rules of the society, the management of its affairs is entrusted.

A copy of the rules and regulations of the Society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the Memorandum of Association.

9. A reading of the above two provisions of the Act would make it clear that the memorandum of association has to be filed with the registrar, along with the details specified in Section 2 of the Act. It implies that the Registrar needs to be informed about how the memorandum stands to be, which means that any changes made to the said memorandum also should be submitted to the Registrar. In the light of the above legal position, the evidence of D.W.1 can be scrutinized, to see whether the first defendant has complied with the said prescriptions. The old and new memorandums are marked as Exs.B1 and B3 respectively. The change brought about by Ex.B3 is with regard to the number of committee members. There is no limit on the powers of the committee to make changes in the memorandum. The only requirement is that it has to be placed before the registrar. The memorandum had to be amended as per the rule changed by the S.V. University, that there should be minimum of seven and maximum of eleven members in the committee. The propriety of such change can be upheld as there is no embargo on the powers of the committee to make such change. The only requirement is to send them to the registrar. The cross examination of D.W.1, who is the secretary and correspondent of the institution, is that he does not remember

whether the amendments were sent to the registrar. No document evidencing that he had sent the amended memorandum to the Registrar is filed. Hence it leaves this Court to come to the conclusion that the amendments are not sent to the Registrar and hence no sanctity can be attached to the new memorandum of association and it is not valid.

Point No.1 is answered accordingly in the negative.

POINT No.2:

9. Proviso to Section 6 of the Act answers this issue and the said section and the proviso run as follows:

6. Suits by and against societies: – Every society registered under this Act may sue or be sued in the name of the President, Chairman, or Principal Secretary, or Trustees, as shall be determined by the rules and regulations of the society, and, in default of such determination in the name of such person as shall be appointed by the governing body for the occasion:

Provided that it shall be competent for any person having a claim or demand against the Society, to sue the President or Chairman, or Principal Secretary or the Trustees thereof, if on application to the governing body some other officer or person be not nominated to be the defendant.

10. The plaintiffs claim to be members of old boys association. The memorandum of association provides for two representatives of the old boys to be part of the committee. Old boys, as per the bye laws, Ex.B2, mean every person who studied for at least one year in the institution. Whether the claim is not genuine or not justified is a different issue, but the plaintiffs are old boys and they have a claim, which cannot be disputed. Hence they would have *locus standi* to file this suit.

Point No.2 is answered in favour of the plaintiffs.

POINT No.3

10. The relief of declaration that the new constitution or the amended constitution and rules are invalid and inoperative follows from the conclusion under point No.1. But the new constitution cannot be declared as void, though it can be declared as invalid. The moment the committee submits the new constitution to the Registrar, as required, they would become valid.

11. Consequent to the new constitution being declared as invalid, any act done under the new constitution would be invalid, which includes the elections. Hence, no relief of mandatory injunction can be granted, as prayed for, directing to constitute a new committee by the first defendant as per rules existing by September 1975, as the committee can always change the memorandum, by following the requisites for such change.

Point No.3 is answered accordingly.

12. As regards the status of Raja of Venkatagiri, the grievance, if any, has to be agitated by him or his legal heirs. Any discussion on that aspect would, hence, be otiose.

To the extent indicated above, the judgment of the lower court stands set aside and the appeal stands allowed partly, but in the circumstances without costs. As a sequel, the miscellaneous applications, if any, shall stand closed.

March , 2017
DSK

T. RAJANI, J