



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A.(MD)No.1134 of 2016

and

C.M.P.(MD)Nos.7054 and 7055 of 2016

K.A.Mohideen Meera,
Correspondent,
Muslim Higher Secondary School,
Abiramam Elementary School,
Natham Elementary School,
No.5/85, Fathima Street,
Natham, Abiramam,
Ramanathapuram.

... Appellant/Petitioner

Vs.

1. The District Educational Officer,
O/o the District Educational Officer,
Paramakudi,
Ramanathapuram District.
2. The District Elementary Educational Officer,
Ramanathapuram,
Ramanathapuram District.
- 3.The Abiramam Education Trust,
represented by its Secretary,
Abiramam, Ramanathapuram District.
- 4.The District Registrar (Administration),
2nd Beach Lane, Chennai-1.

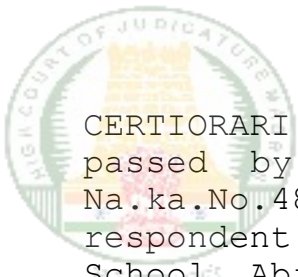
5.V.M.Kadeer Meera Gani
(5th respondent substituted
vide court order dated
06.02.2018 made in C.M.P.No.1052 of 2018)

... Respondents /Respondents

PRAYER: Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order passed by this Court in W.P.(MD)No.4438 of 2016, dated 14.06.2016.

Prayer in WP(MD). 4438/ 2016 :

<https://hcservices.ecourts.gov.in/hcservices/> Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF



CERTIORARI calling for the records relating to the impugned order passed by the 1st respondent District Educational Officer in Na.ka.No.483/Aa1/2016 dated 04.02.2016 registering the 5th respondent as the Correspondent of the Muslim Higher Secondary School, Abiramam and QUASH THE SAME.

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For Appellant : Mr.P.Gunasekaran
For Respondents : Mr.C.M.Marichelliah Prabhu
Additional Government Pleader
for R.1, R.2 and R.4
: Mr.C.Jeganathan
for M/s.Veera Associates
for R.3 and R.5

JUDGMENT

(Judgment of the Court was delivered by M.SATHYANARAYANAN,J.)

By consent, the writ appeal is taken up for final disposal.

2. Mr.C.M.Mariachelliah Prabhu, learned Additional Government Pleader accepts notice on behalf of the respondents 1, 2 and 4 and Mr.C.Jeganathan learned Counsel for M/s Veera Associates appears for the respondents 3 and 5.

3. The appellant is the writ petitioner. The appellant/writ petitioner made a challenge to the order of the first respondent, dated 04.02.2016, registering the fifth respondent (since correspondent of Abiramam Muslim High School) with effect from 26.01.2016 subject to certain conditions.

4. According to the appellant/writ petitioner, he is the correspondent of three schools viz., (a) Muslim Higher Secondary School, Abiramam, (b) Abiramam Elementary School, Abiramam and (c) Natham Elementary School, Natham. It is also the claim of the appellant/writ petitioner that as per the procedure in the General Body Meeting, election to be conducted once in three years in Abiramam Village, wherein 15 Executive Trustees/Members will be elected and they in turn would elect the office bearers of the Trust viz., the President, the Vice-President, the Secretary, the Manager cum Correspondent, the Assistant Secretary, the Treasurer and 9 Executive Members and they would hold office for a period of three years or until the time when the next election is conducted, whichever is later. The appellant/petitioner would state that he was the correspondent nominated for all the above three schools in the year 2012 and the election for the present triennium for the years 2014-2017 was held on 14.03.2014 and he was elected as one of the members of the Board of Management and the said Board in turn nominated him as the correspondent for all the schools and the first and second respondents had also registered him as the Correspondent vide proceedings dated 02.04.2014 and 04.04.2014 respectively and ever since, he is administering the three schools efficiently to the satisfaction of all concerned.



5. It is further averred by the appellant/writ petitioner that the fifth respondent was elected as the Secretary in the year 2012 and ever since his election, he started to act against the interest of the Institution and he has also created records as if the General Body Meeting was held on 26.01.2016 at Chennai, wherein he has elected as Secretary, but whereas no such meeting was held.

6. The appellant/writ petitioner came across an information that certain resolutions were passed on 26.01.2016 and as per the same, he has been removed from the position as the Correspondent of all the three schools and the first respondent has also registered the change of correspondentship vide impugned proceedings, dated 04.02.2016 and challenging the legality of the same, he has filed the writ petition.

7. The writ petition was entertained and notices were ordered. The first respondent has filed counter affidavit and took a stand that the period came to end on 11.12.2015 as per the election took place on 12.12.2012 and one A.M.Mohamed Idris was elected as a President on 21.06.2013 and he resigned from the said post on 24.12.2013 and after some time, the appellant/writ petitioner was appointed as Correspondent on 14.03.2014, vide proceedings of the first respondent, dated 02.04.2014 and the period of correspondentship would be only upto 12.12.2015 for the reason that as per the Bye-Laws of the Trust, election should be conducted for every three years and further, the Executive Committee would be convened for every three years and they would be in the said post for three years or till the conclusion of next election. It is the stand of the first respondent that since the period of correspondentship of the petitioner had expired on 12.12.2015, he has no locus standi to discharge the function as Correspondent and in the election that took place on 26.01.2016, the name of the petitioner was not found and as such, pursuant to the election, Form VII was filed and it was also accepted, vide impugned proceedings and therefore, prays for dismissal of the writ petition.

8. The respondents 3 and 5 had filed their counter affidavit refuting the case of the appellant/writ petitioner and took a stand that the appellant/writ petitioner was not at all a Correspondent of any of the schools run by the third respondent/Trust, for the reason that he was removed from the said post by the Managing Committee. The respondents 3 and 5 had also adopted the stand of the first respondent and would submit that the tenure of the office of the appellant/writ petitioner appointed by the Managing Committee was expired on 11.12.2015 and as such, he cannot claim that he is continuing to act as Correspondent and the removal was also communicated to him on 04.01.2016 by the Secretary by registered post and in the General Body Meeting, which was properly convened, a new team of office bearers were duly elected and the new committee was appointed on 26.01.2016, wherein, the third respondent was appointed as the Secretary to the Educational Agency. It was found



that the appellant/writ petitioner was misusing his position as Correspondent and after removing him, the fifth respondent was appointed as Correspondent of all the three schools and Form-VII was also filed and it was also accepted by the first respondent.

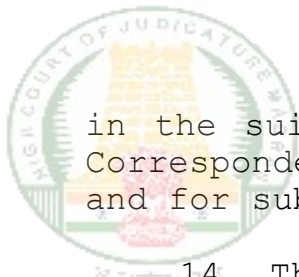
9. The appellant/writ petitioner has filed his reply to the same.

10. The learned Judge, on appraisal of the factual position and also taking into consideration the decision rendered by a Full Bench of this Court in C.M.S.Evangelical Sovi Davi Memorial Higher Secondary School Committee, Kanisal Vs. The District Registrar, Cheranmahadevi, reported in (2002) 2 MLJ, 335, in paragraph No.9, found that so long as the election is not declared invalid in the manner to law, no direction for fresh election could be ordered and it should be decided only by the competent civil Court and in the event, the Registrar satisfied himself as to the particulars furnished in Form VII as correct, he should enter the names in the register maintained for that purpose.

11. The learned Judge has also noted that the validity of the election conducted on 26.01.2016 has not been assailed by the appellant/writ petitioner and the fifth respondent has also produced documentary evidence as to the conduct of election for the new membership that took place on 26.01.2016 as well as the acceptance of Form VII by the first respondent, vide the impugned proceedings, dated 04.02.2016 and therefore, on sustaining the case of the respondents and citing the said decision, dismissed the writ petition, vide impugned order, dated 14.06.2016 and assailing the same, the present writ appeal has been filed by the appellant/writ petitioner.

12. The learned Counsel appearing for the appellant/writ petitioner would submit that in the interregnum, the fifth respondent died and in his place, Thiru.Mohamed.Kader Meera Gani has been substituted as Correspondent and challenging the legality of the election, the appellant/writ petitioner has also filed a suit in O.S.No.30 of 2016 against the third respondent herein as well as the deceased fifth respondent praying for declaration that declaring the General Body Meeting held on 26.01.2016 at Chennai and the alleged election as null and void and particularly to grant a decree of permanent injunction restraining the defendants, their men, agents from disturbing the plaintiff from discharging his duties as Manager/Correspondent to all the three schools and also for further consequential relief and the said suit is pending and there is no interim order in operation.

13. Per contra, the learned Counsel appearing for the private respondents would contend that the validity of the election later on put to challenge in O.S.No.30 of 2016 filed by the appellant/writ petitioner and if he successful, the first respondent may challenge the entry in Form-VII and unless and until, the petitioner succeeds



in the suit, he cannot make a counter claim to the office of the Correspondent which is now held by Thiru.Mohamed.Kader Meera Gani and for substitution of his name, Form VII is yet to be filed.

14. This Court has carefully considered the rival submissions and perused the materials placed on record.

15. In a decision rendered by the Division Bench of this Court in C.Dharmalingam Vs. The District Registrar, Madurai and Others reported in 2010(3) CTC 390, the scope and powers of Registrar under Section 36 of the Tamil Nadu Societies Registration Act 1975 came up for consideration. The Division Bench, after taking into consideration the Full Bench decision in C.M.S.Evangelical Sovi Davi Memorial Higher Secondary School Committee, Kanisal Vs. The District Registrar, Cheranmahadevi, reported in 2005(2) CTC 161 (cited supra), noted that the validity of election can only be decided by competent Civil Court and the Registrar may satisfy himself as to the particulars furnished in Form-VII as correct and he shall enter the names in the Register maintained for that purpose and if he is not satisfied with the particulars, then he has to issue a direction relegating the parties to approach the Civil Court.

16. In a decision rendered by this Court in R.Nallathambi Vs. The District Registrar (Administration) and Registrar of Societies, Nammakkal District and 3 Others reported in 2011(3) CTC 817, the power of Registrar to regulate the affairs under Section 36(1) of the Tamil Nadu Societies Registration Act, 1975 came up for consideration and it is relevant to extract paragraph No.12 of the above said judgment, which is as follows:

"12. From a reading of the above provision it is very clear that the Act is intended to regulate the affairs of the society in accordance with the provisions contained therein and the Registrar may compulsory on certain contingency and for its enforcement the provisions confer only the administrative power of the Registrar to ensure that the registered society to function strictly in accordance with the provisions of the Act or the Rules made thereunder. It is the settled legal position that the power of the Registrar to interfere with the affairs of the society is only to help the Society for its own satisfaction and that the said power cannot be construed as the power of appeal. The Registrar has not been empowered to take upon the conflicted claims of the society based upon the question of fact. A plain reading of Section 36 would reveal that the Registrar can only look into the provisions of the Act and the Rules framed thereunder. The materials to arrive at a conclusion either to believe or not to believe Form No.VII in order to effect change in the register. The power of Registrar to call for any explanation under Section 34 does not contemplate any power to examining the witness or to allow opportunity for



cross-examining the witness. The power is an incidental and it is only for the purpose of maintaining the correct records. However, the exercise of power must not be arbitrary as the orders passed or directions issued by the Registrar are amenable to challenge in the Writ Jurisdiction."

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17. It is settled position of law that the power of Registrar while receiving Form-VII is administrative in nature and he is entitled to adjudicate any dispute between the parties and the aggrieved parties have to move the civil Court to get their claim adjudicated. In the case on hand, admittedly, the petitioner herein has filed a comprehensive suit in O.S.No.30 of 2016, on the file of the Court of the District Munsif, Kamuthi against the third respondent herein as well as the deceased 5th respondent praying for declaration to declare that the General Body Meeting held on 26.01.2016 at Chennai is null and void and for consequential relief and the said suit is pending without any interim order. The fifth respondent is also no more and Thiru.Mohamed.Kader Meera Gani has been substituted and for the substitution of his name, the third respondent is yet to file Form-VII.

18. In the considered opinion of this Court, the reasons assigned by the learned Judge for dismissing the writ petition are based upon the correct appreciation of the factual aspects and legal positions in the light of the ratio laid down by the Full Bench of this Court in C.M.S.Evangelical Sovi Davi Memorial Higher Secondary School Committee, Kanisal Vs. The District Registrar, Cheranmahadevi, reported in (2002) 2 MLJ, 335 cited supra.

19. This Court, on an independent application of mind, is of the considered view that there are no errors apparent or infirmities in the impugned order and finds no merit in the Writ Appeal and therefore, the Writ Appeal is dismissed, confirming the order dated 14.06.2016, made in W.P.(MD)No.4438 of 2016. No costs. Consequently, the connected Miscellaneous Petitions are also dismissed.

20. The appellant/writ petitioner is always at liberty to work out his remedy in accordance with law depending upon the result of the suit in O.S.No.30 of 2016, which is pending on the file of the Court of District Munsif, Kamuthi.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The District Educational Officer,
O/o the District Educational Officer,
Paramakudi,
Ramanathapuram District.



2. The District Elementary Educational Officer,
Ramanathapuram,
Ramanathapuram District.

3. The Abiramam Education Trust,
represented by its Secretary,
Abiramam, Ramanathapuram District.

4. The District Registrar (Administration),
2nd Beach Lane, Chennai-1.

+1cc to M/S.P.Gunasekaran, Advocate SR.No. 48889

+1cc to M/S.Veera Associates, Advocate SR.No. 49095

+1cc to Special Government Pleader, SR.No. 49522

W.A. (MD) No. 1134 of 2016

and

C.M.P. (MD) Nos. 7054 and 7055 of 2016

15.02.2018

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JM/SV MMS/SAR 1/27.02.2018/7P/8C