



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE C.T.SELVAM

W.A.(MD)No.1065 of of 2014

M.P.(MD)No.1 of 2014 and

W.P.(MD)No.2539 of 2016

W.M.P.No.2244 of 2016

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W.A.(MD)No.1065 of of 2014

Kulandai Velu

... Appellant

Vs.

- 1.The Joint Director of School Education,
College Road, Chennai.
- 2.The Chief Educational Officer,
Virudhunagar District,
Virudhunagar.
- 3.The District Educational Officer,
Aruppukottai Educational District,
Aruppukottai.
- 4.The District Registrar (Trust),
Virudhunagar District.
- 5.Sathiriya Nadarkal Uravin Murai,
Rep. by its President,
Kallurani, Aruppukottai,
Virudhunagar District.
- 6.K.Pula Mada Nadar,
Ambalakarar of the Kallurani
Sathiriya Nadarkal Uravin Murai Trust,
Kallurani, Aruppukottai,
Virudhunagar District.
- 7.Kanaga Raj,
The Secretary,
SBK Higher Secondary School,
Kallurani,
Aruppukottai,
Virudhunagar District.



8.SBK Higher Secondary School,
Rep. by its Head Master,
Kallurani,
Aruppukottai,
Virudhunagar District.

... Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent, against the order made in W.P.(MD)No.1178 of 2014, dated 14.08.2014.

Prayer in WP(MD).1178/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 3rd respondent in his proceedings Moo.Moo.No.1443/Aa/2013 dated 21.5.13 and quash the same as illegal and direct the 3rd respondent to take appropriate action in so far as management of the 8th respondent school and thus render justice.

For Appellant : Mr.V.Panneer Selvam

For Respondents 1 to 4 : Mr.V.R.Shanmuganathan

For Respondents 5 to 8 : Mr.G.Prabu Rajadurai
for Mr.C.M.Marichelliah Prabhu

W.P. (MD)No.2539 of 2016

Kulandai Velu

... Petitioner

Vs.

- 1.The Chief Educational Officer,
Virudhunagar.
- 2.The District Educational Officer,
Aruppukottai, Virudhunagar District.

- 3.The Secretary,
SBK Higher Secondary School,
Kallurani,
Aruppukottai,
Virudhunagar District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, to call for the records, pertaining to the paper publication issued by the 3rd respondent in Daily Thanthi, dated 23.01.2016, to fill up the PG Assistant Zoology, B.T.Assistant Science, English, Maths and Science vacancies and quash the same.



For Petitioner : Mr.V.Panneer Selvam
For Respondents 1 & 2 : Mr.V.R.Shanmuganathan
For 3rd Respondent : Mr.G.Prabu Rajadurai
for Mr.C.M.Marichelliah Prabhu

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COMMON JUDGMENT

(Judgment of the Court was delivered by S.MANIKUMAR, J.)

Since, issue involved in the Writ Appeal and the Writ Petition are on the same set of facts, submissions being common, they were heard together and disposed of by means of this Common Judgement.

2. Writ appeal (MD) No.1065 of 2014 is filed, challenging the order made in W.P.(MD)No.1178 of 2014, dated 14.08.2014, wherein, the writ Court has dismissed the writ petition, with a direction to the learned District Munsif, Aruppukottai, to decide the civil suit in O.S.No.86 of 2013 independently on merits and as per law, without in anyway being influenced by the subsequent events and more particularly, the approval of School Committee by the District Educational Officer, Aruppukottai.

3. Writ Petition (MD)No.2539 of 2016, is filed, challenging the paper publication issued by the Secretary, SBK Higher Secondary School, Kallurani, Aruppukottai, Virudhunagar District, in Daily Thanthi, dated 23.01.2016, to fill up the PG Assistant Zoology, B.T.Assistant Science, English, Maths and Science vacancies.

4. It is the case of the appellant/writ petitioner herein that he is a member of Sathiriya Nadarkal Uravin Murai Trust, functioning at Kallurani Village, Aruppukottai, in Virudhunagar District. The Trust established an Educational Institution, in the name and style of "SBK Higher Secondary School". Mr.K.Pula Mada Nadar, Ambalakarar of the abovesaid Trust, 6th respondent in W.A.(MD)No.1065 of 2014, floated a paper publication on 04.01.2012, declaring that he is convening the general body meeting to elect the Executive Committee of the Trust and without conducting any such meeting, he declared the constitution of new Executive Committee. The appellant/writ petitioner herein immediately filed a suit in O.S.No.46 of 2012, before the learned District Munsif, Aruppukottai, to declare the said action as illegal.

5. It is the further case of the appellant/writ petitioner herein that the 6th respondent in W.A.(MD)No.1065 of 2014, once again, issued a paper publication on 31.01.2013, that the election to the Office Bearers of the Trust, would be held on 23.02.2013 and that he claimed Thiru.Muniyasamy Nadar, as elected President of the Trust. However, according to the appellant/writ petitioner herein,



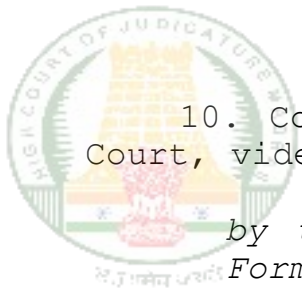
there was no such meeting or election of the Office Bearers on the said date. Therefore, the appellant/writ petitioner herein has filed a civil suit in O.S.No.86 of 2013, before the learned District Munsif, Aruppukottai, praying for a decree of declaration that the election held on 23.02.2013, as nullity, restrain the educational authorities from granting approval of School Committee, restrain the District Registrar from entertaining form-VII and similar other reliefs. While so, the District Educational Officer, Aruppukottai, third respondent in W.A.(MD)No.1065 of 2014 has passed an order, dated 21.05.2013, approving the School Committee. The said order was challenged in W.P.(MD)No.1178 of 2014, with a direction to the District Educational Officer, Aruppukottai, to take appropriate action, insofar as management of SBK Higher Secondary School, Kallurani, Aruppukottai, Virudhungar District.

6. Before the writ Court, the District Educational Officer, Aruppukottai, has filed a counter-affidavit, contending inter alia that the School Committee was duly convened on 23.02.2013, in which, Thiru.Muniyasamy Nadar, was elected as President and Thiru.L.A.Kanagaraaj, as Secretary. Proposal submitted by the School Committee was scrutinized by him and subject to production of form-VII and pending the civil suit in O.S.No.86 of 2013, the Committee was approved.

7. The District Registrar, Virudhunagar District, before the writ Court, in his counter affidavit, contended that form-VII submitted by the President, Sathiriya Nadarkal Uravin Murai, Aruppukottai, is kept pending in his office, on account of the pendency of the Writ Petition and the civil suits. According to the District Registrar, the notice of change of Committee in form-VII was submitted on 22.03.2013 by the President, Sathiriya Nadarkal Uravin Murai, Aruppukottai.

8. Before the writ Court, the President, Sathiriya Nadarkal Uravin Murai, Aruppukottai, 5th respondent in W.A.(MD)No.1065 of 2014, has contended that the appellant/writ petitioner herein was part of the executive body, that managed the institution, till the year 2011. The appellant/writ petitioner herein tried his level best to stop the election process and this Court vide order dated 02.01.2013, in W.P.(MD)No.2944 of 2012, directed the Trust to conduct the election. Accordingly, election was conducted. The fifth respondent in W.A.(MD)No.1065 of 2014, secured 140 votes, as against 5 votes secured by Thiru.Karunakaran, who is none other than the candidate sponsored by the appellant/writ petitioner herein.

9. According to the 5th respondent in W.A(MD)No.1065 of 2014, immediately after the election, the appellant/writ petitioner herein filed a suit in O.S.No.86 of 2013. He submitted form-VII before the District Registrar and application before the District Educational Officer for approval of School Committee.



10. Considering the facts and circumstances of the case, this Court, vide impugned order, dated 14.08.2014, held as follows:

"9. The petitioner challenges the approval given by the third respondent primarily on the ground that Form-VII submitted by the fifth respondent is yet to be recognized by the District Registrar.

10. The order passed by the District Educational Officer, Aruppukottai, dated 21 May, 2013 very clearly shows that the approval was granted subject to production of form-VII duly recognized by the District Registrar and pending the suit in O.S.No.86 of 2013.

11. The eighth respondent is an educational institution. The School should have a Committee to administer its affairs. The fifth respondent produced a copy of form-VII before the third respondent. Form-VII contains the names of the elected members of the Trust. The third respondent, having found that there was no rival claim, approved the School Committee. The counter-affidavit filed by the fourth respondent also very clearly shows that the fifth respondent has already filed form-VII and nobody much less the petitioner has made any rival claim. The District Registrar kept form-VII pending on account of the pendency of this Writ Petition and the suit filed by the petitioner in O.S.No.86 of 2013.

12. The petitioner has already filed a comprehensive suit before the learned District Munsif, Aruppukottai in O.S.No.86 of 2013, challenging the decision taken in the meeting and the election of the fifth respondent. The petitioner in the said suit wanted the District Educational Officer not to approve the Committee. Similarly, he wanted an injunction restraining the District Registrar from entertaining form-VII. The petitioner failed to obtain any kind of interim orders from the Civil Court. The District Educational Officer passed the impugned order, during the currency of the civil suit. Nothing prevented the petitioner from amending the prayer for the purpose of setting aside the impugned order, which was passed during the currency of the civil suit. The petitioner appears to be interested in conducting parallel proceedings. It is not possible for this Court exercising jurisdiction under Article 226 of the Constitution of India to consider disputed facts and to arrive at a finding as to whether the election conducted on 23 February, 2013 was a valid election



and whether the fifth respondent was duly and properly elected as the President.

13. The petitioner placed reliance on a judgment of the Division Bench in **Tirunelveli CMS-Evangelical Church v. The District Registrar, Cheranmahadevi & 7 others [2008 Writ L.R. 575]**. The said case was decided on a totally different set of facts. The Division Bench found that the District Elementary Educational Officer, while approving the School Committee, failed to add a rider that the order of approval would be subject to change, in case it was found to be incorrect. The Division Bench in paragraph 22 of the judgment made the position very clear:

"22. In our considered view, ultimately the Appellants challenge the election of Daniel Group as Office Bearers in the election conducted by the District Registrar. The Appellants, aggrieved by the election, cannot challenge the acceptance of Form No.VII by the District Registrar, as a short-cut to invalidate the election. As held by the Full Bench in C.M.S. Evangelical Case (cited supra), the validity of election could very well be decided only by the competent civil court as the parties are entitled to let in their evidence to sustain their respective claims. If at all the Appellants are aggrieved by the election of officer bearers of 1st Respondent Church Society, the same can be challenged only before the Civil Court. Form No.VII is only consequential to the election and constitution of the Managing Committee and the same cannot be challenged by way of Writ Petition."

14. Insofar as the present case is concerned, the District Educational Officer very clearly stated that the approval of Committee is subject to production of form-VII and the judgment and decree to be passed in O.S.No.86 of 2013.

15. The approval of School Committee was given by the third respondent on the basis of a decision taken by the members of the Trust. The validity of the election is under challenge before the Civil Court at the instance of the petitioner. The impugned proceedings is, therefore, only a consequential proceedings. The petitioner should obtain a



declaration from the Civil Court with regard to the validity of the election held on 23 February, 2013. It would not be possible for the District Educational Officer to decide the validity of election, while considering the application submitted by the fifth respondent for approval of School Committee. The petitioner has no case that he raised a dispute with regard to the approval of Committee and a request was made to the District Educational Officer not to approve the Committee. The third respondent was, therefore, perfectly justified in approving the School Committee. I do not, therefore, find any merit in the contention taken by the petitioner.

DISPOSITION:

16. In the result, the Writ Petition is dismissed. However, I make it clear that the dismissal of this Writ Petition would not stand in the way of the petitioner prosecuting the suit in O.S.No.86 of 2013 before the learned District Munsif, Aruppukottai.

17. The learned District Munsif, Aruppukottai, is directed to decide the civil suit in O.S.No.86 of 2013 independently on merits and as per law, without in anyway being influenced by the subsequent events and more particularly, the approval of School Committee by the third respondent."

11. Challenging the said order of the Writ Court, dated 14.08.2014, instant writ appeal has been filed by the appellant/writ petitioner herein on the following grounds:

(i) Writ Court ought to have considered that the school committee was approved by the District Educational Officer, Aruppukkottai, without approval of the Form VII by the District Registrar, Virudhunagar. The approval of school committee should be consequential approval of Form VII. Unless the Form VII was approved by the District Registrar, the District Educational Officer has no authority to approve the school committee. If the approval of school committee, i.e. impugned order passed by the District Educational Officer, Aruppukkottai, dated 21.05.2013 is accepted, even before acceptance of the Form VII, the acceptance of Form VII will become futile exercise and therefore, the order approving the School Committee, is liable to be set aside.

(ii) It is an admitted fact that Form VII was not approved by the District Registrar, Virudhunagar and



unless the Form VII is approved by the District Registrar, Virudhunagar, the District Educational Officer, Aruppukottai, Virudhunagar District has no authority to approve the school committee and he is not the competent authority to approve or disapprove the election. If the Form VII is approved by the District Registrar, Virudhunagar, the District Educational Officer, Aruppukottai, Virudhunagar District, has to approve the school committee formed by the elected group, which is the consequential action of Form VII approval.

(iii) When the Form VII was not approved by the competent authority, the educational officer has no business to approve the school committee with conditions, (i) Certificate of Form VII approval by the District Registrar should be sent to the office immediately, (ii) School Committee approval is subject to the result of I.A.No.286 of 2013 and O.S.No.86 of 2013. The act of the the District Educational Officer, Aruppukottai, Virudhunagar District, is nothing but dual role i.e. one side, he has approved the School Committee and on the other side, impliedly approved the Election. The act of the District Educational Officer, Aruppukottai, Virudhunagar District, is beyond his power and colorable exercise of power.

(iv) If there is no rival Form VII, it is not an automatic to approve the single Form VII. Writ Court has clearly observed that "it could not be possible for the District Educational Officer to decide the validity of election, while considering the application submitted by the President, Sathiriya Nadarkal Uravin Murai, for approval of school committee." However, in the present case, the District Educational Officer, Aruppukottai, Virudhunagar District, has impliedly decided the validity of election by approving the school committee.

(v) Writ Court ought to have considered that the Division Bench clearly held that the Educational Authorities ought to have verified whether the election of office bearers was approved by the District Registrar and without verifying the same, the Educational Authority hastily passed the order, accepting the proposal of the Correspondent, approval is liable to be quashed.

(vi) Writ Court ought to have considered that mere



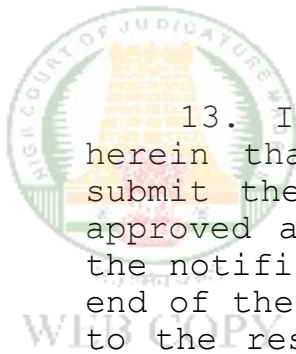
imposing condition in the order, approving the School Committee, will not validate the order passed by the District Educational Officer, Aruppukottai, Virudhunagar District. If it is accepted, the entire function of the District Registrar (Trust), Virudhunagar District, under the Tamil Nadu Societies Registration Act, 1975 would become futile.

(vii) Writ Court ought to have consider that order of approval has been granted, subsequent to the filing of the civil suit and that the writ petition has been filed, challenging the order of approval of the school committee on the ground that whether the District Educational Officer, Aruppukottai, Virudhunagar District, can approve the school committee, without approval of Form VII and therefore, there is no disputed facts in deciding the validity of election in the writ petition and it is not the parallel proceedings.

12. Pursuant to the order made in W.P.No.1178 of 2014, dated 14.08.2014, the Secretary, SBK Higher Secondary School, Aruppukottai, Virudhunagar District (3rd respondent in W.P.(MD) No.2539 of 2016) has issued paper publication in Tamil daily 'Daily Thanthi' to fill up four B.T. Assistants and one P.G. Assistant on 23.01.2016, by fixing the last date for submission of the application on 31.01.2016. The society is having enormous property with income of monthly rent and various sources. The appellant/writ petitioner herein came to know that returns were furnished for the respective years, showing the income as,

Financial Year	Income
2007-08	Rs.2,450/-
2008-09	Rs.4,665/-
2009-10	Rs.4,660/-
2010-11	Rs.4,815/-
2011-12	Rs.9,21,567/-
2012-13	Rs.20,97,248.95/-

However, without the approval of Form VII by the District Registrar (Trust), Virudhunagar District and without considering the legal position, with regard to approval of the school committee with conditions, the Secretary, SBK Higher Secondary School, Aruppukottai, Virudhunagar District (3rd respondent in W.P.(MD) No.2539 of 2016) has issued the above paper publication to fill up four B.T. Assistants and one P.G. Assistant. Challenging the said publication, W.P.(MD)No.2539 of 2016, has been filed by the appellant/writ petitioner herein.



13. It is the contention of the appellant/writ petitioner herein that the school committee was approved with condition to submit the form VII approval immediately. Since form VII was not approved and that the period was going to be ended on 20.03.2016, the notification issued to fill up the long pending vacancies at the end of the period is illegal. School committee was approved, subject to the result of the civil suit and the condition to produce the form VII approval by an order dated 21.05.2013 for the period from 21.03.2013 to 20.03.2016.

14. According to the appellant/writ petitioner herein, without complying with the condition, Secretary, SBK Higher Secondary School, Aruppukottai, Virudhunagar District (3rd respondent in W.P. (MD)No.2539 of 2016) was showing their interest only to fill up the long pending vacancies before the period. Already, respondents have collected huge funds without any accounts and now they are trying to fill up the vacancies by open market. As far as the post of P.G. Assistant is concerned, there is no recruitment process. For Government School, the Teacher Recruitment Board is conducting examination, but for the Government Aided Schools, the school committee is the authority to fill up the posts and hence, there is no committee with qualification or subject expert to conduct selection process to fill up the vacancies and the paper publication issued to fill the vacancies, is liable to be set aside.

15. On the contra, learned counsel for the respondents made submissions, by filing a typed set of papers.

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

17. The case of the appellant/writ petitioner herein is that he is a member of Sathiriya Nadarkal Uravin Murai Trust functioning at Kallurani Village, Aruppukottai, Virudhunagar district. According to him, the Trust established an Educational Institution in the name and style of 'SBK Higher Secondary School'. It is alleged by the appellant that the sixth respondent issued a paper publication on 04.01.2012, declaring that he is convening the General Body meeting to elect the Executive Committee of the Trust and according to the appellant/writ petitioner herein without conducting any such meeting, he declared the constitution of a new Executive Committee. Aggrieved over the same, the appellant filed a suit in O.S.No.46 of 2012 before the learned District Munsif, Aruppukottai, seeking a declaration to declare the said action of the sixth respondent as illegal. In the meanwhile, the sixth respondent, once again, issued a paper publication on 31.01.2013, informing that the election of the Office Bearers of the Trust would be held on 23.02.2013. It is the case of the appellant/writ petitioner herein that there was no such meeting or election of Office Bearers held on 23.02.2013, as claimed by the sixth respondent. However, the sixth respondent

<https://hccs.cse.cdn.net/hccs/ru.Muniyasamy Nadar was elected as the President of>



the Trust. Thereafter, the appellant filed a civil suit in O.S.No.86 of 2013 before the learned District Munsif, Aruppukkottai, praying for a declaration to declare the election held on 23.02.2013, as a nullity, to restrain the educational authorities from granting approval of the School Committee and to restrain the District Registrar from entertaining Form-VII and similar other reliefs. While so, the third respondent passed an order dated 21.05.2013, approving the School Committee.

18. The contention of the third respondent, District Educational Officer, is that the School Committee was duly elected on 23.02.2013 and Thiru.Muniyasamy Nadar was elected as President and Thiru.L.A.Kanagaraj as Secretary. The proposal submitted by the School Committee was scrutinized by him and subject to production of form-VII and pending civil suit in O.S.No.86 of 2013, he gave approval to the School Committee.

19. The contention of the fourth respondent, District Registrar, Virudhunagar District, is that form-VII submitted by the fifth respondent is kept pending in his office on account of pendency of the Writ Petition and the civil suits. According to the fourth respondent, notice of change of Committee in form-VII was given on 22.03.2013, by the fifth respondent and that there is no rival claim or submission of another form-VII till date.

20. The contention of the fifth respondent, is that the appellant was part of the executive body that managed the institution till the year 2011. According to him, the appellant/writ petitioner herein tried his level best to stop the election process, however this Court vide order dated 02.01.2013 in W.P.(MD)No.2944 of 2012, directed the Trust to conduct the election. Accordingly, election was conducted and he secured 140 votes as against 5 votes secured by Thiru.Karunakaran, the candidate sponsored by the appellant/writ petitioner herein. Immediately, after the said election, appellant/writ petitioner herien filed a suit in O.S.No.86 of 2013. The fifth respondent, who was nominated as the School Committee, submitted form-VII before the District Registrar and an application before the District Educational Officer for approval of School Committee. It is the contention of the fifth respondent that in view of the civil suit in O.S.No.86 of 2013, it is not open to the appellant to prosecute the writ proceedings.

21. Now, it has to be seen whether in the facts and circumstance of the instant case the third respondent District Educational Officer is justified in approving the school committee and whether the Secretary, SBK Higher Secondary School, Kallurani, is right in issuing paper publication to fill up the PG Assistant Zoology, B.T.Assistant Science, English, Maths and Science vacancies.



22. A Full Bench of this court in **C.M.S.Evangelical Suvi David Memorial Higher Secondary School Committee, Karisal Vs. The District Registrar Cheranmahadevi, Tirunelveli District and others** reported in 2005 (2) CTC 161, at paragraphs 18 and 20, held as follows:

"18.The power of the Registrar to enquire into the affairs of the society is only to hold a summary inquiry for his own satisfaction. The said power cannot be construed as the power of appeal. Under Section 36, the Registrar has not been empowered to adjudicate upon the conflicting claims to represent the society based upon question of fact. A plain reading of Section 36 shows that the Registrar could look only the provisions of the Act and the Rules and prima facie 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 the Registrar to call for information and explanation under Section 34 does not contemplate any power to examine witnesses or to allow opportunity for cross examination of witnesses. The power in our view is incidental and it is only for the purpose of maintaining correct records. As the power to conduct inquiry is only limited in order to find out whether constitution of members are valid, the enquiry is limited only for the purpose of making entries in the register. However, the exercise of power must not be arbitrary as the orders passed or directions issued by the Registrar is amenable to challenge in the Writ Jurisdiction.

20....Hence, the power under sub-section (9) of Section 36 cannot be stretched to a power on the Registrar to direct the registered society to hold fresh election. A direction to hold fresh election would amount to indirectly setting aside the earlier election and such power is not conferred on the Registrar under any of the provisions of the Act. So long as the election is not declared invalid in the manner known to law, no direction for fresh election could be ordered. Validity of the election could very well be decided only by the competent Civil Court as the parties are entitled to let in their evidence to sustain their respective claims. In the event the Registrar satisfies himself as to the particulars furnished in Form VII as correct, he should enter the names in the register maintained for that purpose. In the event if he does not satisfy as to the particulars and thereby does not accept Form VII, he has to issue a direction relegating the parties to approach the Civil Court for appropriate orders and thereafter shall act



as per the orders of the Civil Court. Accordingly, the issue is answered...."

23. Another Division Bench of this Court in **R.Muralidaran and others Vs. District Registrar, South Madras and another** reported in (2008) 1 MLJ 1308 had refused to reopen the scope of the Full Bench by clothing the Registrar with additional power and in paragraph 39, it is held as follows:

"39.Therefore, we hold that a writ would not lie against any ministerial act performed by the Registrar of Societies under the Provisions of the Tamil Nadu Societies Registration Act, including the acceptance or rejection of Form No.VII. Whenever Form No.VII is filed, the District Registrar can only call for further information/explanation and file the same along with the Form under Section 34 and he is not entitled to adjudicate any dispute. Therefore, the direction issued by the District Registrar in his order dated 30.5.2007 holding the elections held on 28.1.2007 to be invalid and directing the parties to go in for fresh election, cannot be sustained, on account of the fact that he exercised a jurisdiction not vested in him by law while accepting Form VII."

24. Thereafter, another Division Bench in **P.V.Kadiravan Vs. Kallar Kalvi Kazhagam, Usilampatti and others** reported in (2009) 4 MLJ 461, after referring to paragraph 18 of the Full Bench judgment, in paragraph 23, held as follows:

"23.As seen from Paragraph 18 of the judgment of the Full Bench extracted above, the Full Bench dealt with the power of the Registrar, both under Section 36 and under Section 34 of the Act. Since Section 36 of the Act empowers the Registrar to conduct an inquiry, the Full Bench held that the exercise of such power under Section 36 should not be arbitrary as the orders passed by the Registrar would be amenable to challenge in the writ jurisdiction. But, insofar as the power under Section 34 is concerned, the Registrar is not expected to conduct any inquiry except to call for additional information or explanation and that too just for the purpose of filing it as Annexure to the original document. Full Bench has clearly held that power under Section 34 is only incidental and it is only for the purpose of maintaining correct records."

25. A Division Bench of this Court in **C.M.S. Evangelical Suvi David Memorial Higher Secondary School Committee, Karisal Vs. District Registrar, Cheranmahadevi, Tirunelveli District and others** reported in (2009) 2 MLJ 370 dealt with the scope of the Full Bench



judgment and differed **R.Muralidaran's** case (cited supra). Paragraphs 32 and 36, it was held as follows:

"32. By characterizing the power of the Registrar is merely a ministerial function, the statutory functions and supervisory role, which the Registrar is bound to perform, would be diluted. If we must assume that Registrar will not even undertake any form of appraisal, it will mean that blind with realities that Civil Court litigation does not all end too soon and attack will arise with the maximum period of tenure of office bearers for 3 years provided under the Act which itself expire before conclusion of the proceedings before the Civil Court.

36. In view of the foregoing analysis of all the relevant provisions and the ratio of the Full Bench decision, our conclusions are as follows :-

(i) The ratio of the Full Bench decision is only to the effect that the Registrar does not have any power either under Section 34 or 36 of the Tamil Nadu Societies Registration Act, 1975, to cancel the election to the committee, and, or to direct holding of fresh election.

(ii) If the Registrar of the Societies is not satisfied about the correctness of the Form VII, he need not take such Form VII on file, but he can direct the parties to approach the Civil Court to establish the validity of the election.

(iii) When any notice in Form VII is received by the Registrar, he is required to find out whether such notice has emanated from the appropriate authority. Obviously, he is also required to find out whether the persons claiming to be the members are in fact the members of the society. Since the register maintained in the office of the Registrar is supposed to contain the names of such members, it is not difficult for the Registrar to find out as to who are the members of the society.

(iv) Section 36 of the Act contemplates that, if necessary, the Registrar can call upon the persons likely to have information, knowledge in the matter for enquiry and for recording of statements on oath.

(v) Such conclusion by the Registrar is only for the purpose of maintenance of correct records, but any such order regarding membership of the society or election to the committee for the purpose of maintenance of records is obviously subject to the decision of the Civil Court, whether final or interlocutory order. However, till any contrary order is passed by the Civil Court, either finally or even by



interlocutory order, the authorities under the Tamil Nadu Societies Registration Act, 1975 or under the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, are not expected to go beyond such taking of Form VII. There is no concept of accepting as many as Form VII are possible as adoption of such a course would obviously result in chaotic conditions.

(vi) It is immaterial as to whether the order of the Registrar is considered as "administrative" or "ministerial". If, while passing the order, the Registrar acts arbitrarily, it would be open to the Writ court to consider the matter within the accepted parameters of writ jurisdiction and pass any appropriate order. Under what circumstances the High Court can interfere would obviously depend upon the facts and circumstances of each case."

The division bench while commenting upon the earlier division bench judgment in **R.Muralidaran's case (cited supra)**, in paragraphs 20 and 23 held as follows:

"20. From the above analysis, it is apparent that the Division Bench in R. Muralidharan's case and the subsequent decisions, which have merely followed the R. Muralidharan's case, have been rendered by ignoring many relevant and vital statutory provisions and statutory rules such as Sections 26(4), 29, 35, 37 (c), 46 to 48 of the Act and Rules 49, 50 and 51 of the Rules. Therefore, it can be concluded that such decisions have been rendered per incuriam.

23..... It is no doubt true that acceptance of Form No.VII in one way or the other by the Registrar would not finally determine the status of the warring parties, which is to be decided in the Civil Court. But, it is another thing to say that the Registrar will have no role in the matter and he has to merely act as a rubber stamp. If such a view is to be accepted, chaotic situation would prevail in many of the societies. In the above context, the relevance and importance of Chapter V of the Act have been completely lost sight of, almost in all the decisions."

26. Insofar as the present case is concerned, as the school should have a committee to administer its affairs and since there was no rival claim, the third respondent / District Educational Officer approved the Committee very clearly stating that the approval of the Committee is subject to production of form-VII and the judgment and decree to be passed in O.S.No.86 of 2013.



27. The Writ Court upon perusing the material on record has categorically held that the third respondent was perfectly justified in approving the School Committee. The writ Court has stated the following reasons for its decision viz.,

(i) that the approval of School Committee was given by the third respondent on the basis of a decision taken by the members of the Trust and the validity of the election is subject to challenge before the Civil Court at the instance of the appellant.

(ii) that the impugned proceedings before the writ Court is only a consequential proceedings and the appellant should obtained a declaration from the Civil Court with regard to the validity of the election held on 23.02.2013.

(iii) that it would not be possible for the District Educational Officer to decide the validity of election, while considering the application submitted by the fifth respondent for approval of School Committee as the appellant has not raised a dispute with regard to the approval of Committee and request was not made to the District Educational Officer to approve the Committee.

28. Further a Hon'ble Full Bench of this Court in ***C.M.S.Evangelical case (cited supra)*** has categorically held that if at all any party is aggrieved by the election of officer bearers of a Society / Trust, the same can be challenged only before the Civil Court. Form No.VII is only consequential to the election and constitution of the Managing Committee and the same cannot be challenged by way of Writ Petition.

29. In view of our foregoing discussion, we do not find any illegality or infirmity in the order passed by the Writ Court, warranting interference. Accordingly, the impugned order dated 14.08.2014, of the Writ Court made in W.P.(MD)No.1178 of 2014, is sustained. In view of our above decision in the writ appeal, instant writ petition(MD) No.2539 of 2016 is liable to be dismissed.

In the light of the above, both writ appeal and writ petition are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

asr

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To

1. The Joint Director of School Education,
College Road, Chennai.
2. The Chief Educational Officer,
Virudhunagar District,
Virudhunagar.
3. The District Educational Officer,
Aruppukottai Educational District,
Aruppukottai.
4. The District Registrar (Trust),
Virudhunagar District.

W.A. (MD)No.1065 of of 2014

M.P. (MD)No.1 of 2014

W.P. (MD)No.2539 of 2016

W.M.P.No.2244 of 2016

06.02.2019

CS(14.10.2019) 17P 5C