

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.01.2020

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.23354 of 2012

and

M.P.No.2 of 2012

The Fireworks Dealers Association,
(Registration No.35/1958)
Represented by its President J.Mthiazhagan
274, Rangaigowder Street,
Coimbatore - 641 001.

... Petitioner

Vs

1.The District Registrar,
District Registration Office,
Coimbatore.

2. The Sub Registrar,
Sub-Registrar Office,
Periyannayakapalayam,
Coimbatore.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking for an issuance of a writ of Certiorarified Mandamus calling for the records pertaining to the general Notification made in Tamil Nadu Government Gazette dated 29.06.1983 issued by the first respondent and quash the same, in so far as the petitioner association is concerned, and direct the first respondent to restore the name of the petitioner association in the register of societies.

For Petitioner : Mr.A.E.Ravichandran

For Respondents : Mr.Mr.P.P.Purushothaman For R1 & R2
Government Advocate (Registration)

O R D E R

This Writ Petition has been filed challenging the impugned order dated 29.06.1983 issued by the first respondent declaring the petitioner's society as a defunct society.

2. It is the case of the petitioner that the first respondent has declared the petitioner as a defunct society without any notice. According to the petitioner, as per Section 44 of the Tamil Nadu Societies Registration Act, 1975, only after holding an enquiry, a society can be declared as a defunct society. In such circumstances, this Writ petition has been filed.

3. Heard the learned counsel for the petitioner and the learned Government Advocate (Registration) appearing for the respondents 1 and 2.

4. Admittedly, as seen from the typed set of papers and as seen from the counter affidavit filed by the respondents, there is no reference to any notice issued by the first respondent to the petitioner prior to declaring the petitioner as a defunct society. Section 44 of the Tamil Nadu Society Registration Act 1975 reads as follows:

'44. (1) Where the Registrar has reasonable cause to believe that a registered society is not carrying on business defunct in operation, he shall send to the registered society by registered post a letter enquiring whether the society is carrying on business or in operation.

(2) If the Registrar either receives an answer from the registered society to the effect that it is not carrying on business or in operation, or does not within such period as may be prescribed after sending the letter receive any answer, he may publish in the Tamil Nadu Government Gazette, and send to the registered society by registered post, a notice that, at the expiration of such period as may be prescribed from the date of such publication, the name of the registered society mentioned therein will, unless cause is shown to the contrary, be struck off the register and the registered society will be dissolved.

(3) If, in any case where a registered society

(a) is being wound up, the Registrar has

reasonable cause to believe either that no liquidator is acting or that the affairs of the registered society have been completely wound up ; or

(b) has not, for three consecutive financial years filed with the Registrar all or any of the documents referred to in clause (b) of sub-section (3) of section 16 the Registrar may publish in the Tamil Nadu Government Gazette, and send to the registered society by registered post, a like notice as is provided in sub-section (2) of this section.

(4) At the expiration of the time mentioned in the notice referred to in sub-section (2), or sub-section (3), the Registrar may, unless cause for the contrary previous & shown by the registered society, strike its name off the register and shall publish notice thereof in the Tamil Nadu Government Gazette, and, on the publication of such notice, the registered society shall be deemed to be dissolved :

Provided that the liability, if any, of every officer and member of the registered society shall continue and may be enforced as if the registered society had not been dissolved.

(5) (a) If a registered society or any member or or thereof feels aggrieved by the name 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.

(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.

(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 register, order such restoration.

(7) The registered society whose name is restored to the register under sub-section (5) or sub-section (6) shall be deemed to have continued in existence as if its name had not been struck off ; and the Government or the Inspector-General of Registration or the court, as the case may be, may, by order, give such directions and make such provisions as seem just for placing the registered society and all other persons in the same position, as nearly as may be, as if the name of the registered society had not been struck off. "

5. As seen from Section 44 of the Act, it is clear that the first respondent will have to issue notice to the petitioner and hold an enquiry and only thereafter, declare the petitioner's society as a defunct society. In the case on hand, no notice has been issued to the petitioner or any enquiry held before declaring the petitioner as a defunct society.

6. In such circumstances, this Court is of the considered view that the impugned order dated 29.06.1983 passed by the first respondent is not in accordance with law. Accordingly, the impugned order dated 29.06.1983 passed by the first respondent is hereby quashed and the matter is remanded back to the first respondent for fresh consideration in accordance with law.

7. The petitioner is directed to file all the accounts right from the date of inception of the petitioner's society to the first respondent and the first respondent shall consider the same in accordance with law and pass final orders with regard to the declaration of the petitioner's society as a defunct society.

8. It is also made clear that the first respondent shall afford an opportunity of personal hearing to the petitioner before passing final orders.

9. With the above said directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(J)

//True copy//

Sub Assistant Registrar

rli

To

1.The District Registrar,
District Registration Office,
Coimbatore.

2. The Sub Registrar,
Sub-Registrar Office,
Periyannayakapalayam,
Coimbatore.

+1cc to Mr.A.E.Ravichandran, Advocate SR.No.2847

+1cc to Government Pleader SR.No.3538

W.P.No.23354 of 2012
and M.P.No.2 of 2012

GMV (06/02/2020)

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